MEECH LAKE: FROM CENTRE TO PERIPHERY

THE IMPACT OF THE 1987 CONSTITUTIONAL ACCORD ON CANADIAN SETTLEMENTS
A SPECULATION

Hilda Symonds and H. Peter Oberlander
Editors

1988
The Centre for Human Settlements
Faculty of Graduate Studies
The University of British Columbia
Vancouver, B.C.

90-01815/

MEECH LAKE, FROM CENTRE TO PERIPHERY

Canadian Cataloguing in Publication Data

Main entry under title:

Meech Lake, from centre to periphery

Proceedings of a seminar held January 7-8, 1988
ISBN 0-88365-347-6

1. Municipal government—Canada—Congresses. 2. Federal-local relations—Canada—Congresses.* 3. Federal-provincial relations—Canada—Congresses. 4. Canada. Constitution Act, 1982—Congresses. 5. Canada—Constitutional law—Amendments—Congresses. I. Symonds, Hilda. II. Oberlander, H. Peter, 1922- III. University of British Columbia. Centre for Human Settlements.

JS1711.M43 1988 320.8'0971 C88-091399-1

Printed in Canada
Price $12.00

TABLE OF CONTENTS

page

FOREWORD 1
Dr.David Strangway, President
The University of British Columbia

PREFACE 3

PART I—INTRODUCTION: PERSPECTIVE

H.P. OBERLANDER — A Nation of Cities: The Urban Perspective 9

NORMAN TARNOW — The Quebec Round— A Bureaucrat's Perspective 17

WILLIAM T. LANE — A Frame of Reference— After Entrenchment: The Consequences for Local Government 28

PART II—THE ACCORD: PROCESS AND PRODUCT

ALAN CAIRNS — Federalism and the Provinces 45

GLADYS SYMONS	Ideology and Social Change: Meech Lake and National Identity	55
ANTHONY SCOTT	The Accord and the Urban Economy	68

PART III—SENIOR GOVERNMENT AND LOCAL GOVERNMENT RELATIONS

ANDREW SANCTON	Social Service Delivery at Relevant Government Levels	77
VICTOR JONES	Beavers and Cats: Federal-Local Relations in the United States and Canada	88
PATRICK J. SMITH	Local-Federal Government Relations: Canadian Perspectives, American Comparisons. A View through a Kaleidoscope	127

PART IV—LOCAL GOVERNMENT TODAY AND TOMORROW

ALAN ARTIBISE	Local Government: Some Introductory Remarks	141
MARIE-ODILE TREPANIER	Local Government Reorganization in Quebec: Cause and Effect	144
HUGH KELLAS	Managing Regional Development: The Case of the Greater Vancouver Regional District	154
MARILYN BAKER	A View from The Municipal Periphery	159

PART V—SOME DISCUSSION AND SOME CONCLUSIONS

HILDA SYMONDS The Discussion Session 165

H. P. OBERLANDER Concluding Comments 178

APPENDICES

A Guide to the Constitutional Accord of June 3, 1987

The Centre for Human Settlements—The First Decade

Biographical Information

THE UNIVERSITY OF BRITISH COLUMBIA
VANCOUVER

OFFICE OF THE
PRESIDENT

FOREWORD

Our Centre for Human Settlements was created when the UN Conference on Human Settlements met in Vancouver in 1976 Its task was to continue the academic and professional work that led to the Conference, and expand it through a program of research and development on the dynamics of Canadian settlements. The convening of invitational seminars of academics, professionals and graduate students on current issues concerning Canadian settlements and their relationship to each other provided an important means to accomplish the Centre's program. To celebrate a decade of seminars at UBC, the Centre convened the 10th Anniversary Seminar on the impact of the Meech Lake Accord on Canada's settlement system. It was my pleasure, not only to welcome those attending, but also to participate in the initial presentations.

Meech Lake meant something very different to me than it did to most of the participants. When I was first employed, I went to work for a mining company. The mining company owned the exploration rights to Meech Lake, and I spent much of a winter doing geophysical surveys on Meech Lake itself. That was back in the 1950s, and so I was a little surprised when, having decided that there were no ore bodies associated with Meech Lake, I heard that in fact it had such wealth of another kind associated with it! I am glad to 'revisit Meech Lake' after 35 years, and to be connected with it once again, at least during this seminar.

We at UBC are proud of the work of the Centre for Human Settlements and its decade-plus of accomplishments. It is with a great sense of privilege that I participated in the seminar and played a small role in its opening ceremonies. The list of participants reflects a broad range of universities from Canada and abroad. I think that is particularly significant, because the Meech Lake Accord has implications of many kinds for the whole country, and in fact in the longer term perhaps on an even broader basis. It seems to me that this kind of interdisciplinary discussion reflects what universities are all about. It is the ability to bring together people from different sectors, different disciplines, to talk about common issues and common interests, and to view things from different perspectives. To see that this conference is taking place on a university campus and in particular on this university campus, is something that is absolutely first rate. I am happy that the proceedings are now being published and therefore will become available to a larger and concerned audience.

D.W. Strangway

David W. Strangway
President

PREFACE

The Meech Lake Accord and its subsequent impact on the 1982 Constitution Act, is undoubtedly Canada's most significant political event in the last half of the 20th century. It re-aligns fundamentally federal and provincial powers and this shift is perceived as a change "from the centre to the periphery". Since its inception The University of British Columbia's Centre for Human Settlements has been concerned with the impact of change on the system of settlements and the resulting improvement or decline in the life and character of human settlements; of particular interest has been political and administrative changes in the structure and process of governance. In this context the Meech Lake Accord and its subsequent entrenchment in Canada's constitution represents a major potential impact on Canadian settlements. Both before and since the Meech Lake Accord was achieved, the public discussion has been entirely between the federal/provincial partners. What did Ottawa give away, what did the provinces gain? What were the provinces able to get out of Ottawa; what was Ottawa willing to surrender? Very little, if any, discussion has taken place as to the impact of those brokerage arrangements on local government. Here the impact at the moment seems hidden, but perhaps it will be most significant in the long run. While this is mere speculation, some evidence suggests that it ought to be examined analytically. Consequently, the UBC Centre for Human Settlements convened an invitational seminar to speculate on "cause and effect". The major purpose of the seminar was to identify how the Meech Lake Accord and the subsequent constitutional changes are likely to affect all aspects of Canadian settlements and their place in the emerging system of governance. This Invitational Seminar also commemorated a decade of meetings and substantive research by UBC's Centre for Human

Settlements, created to provide continuing academic and professional research as a follow-up to the UN Conference on Human Settlements, Habitat '76 in Vancouver. As the 10th Anniversary Invitational Seminar, UBC was able to bring to its campus a distinguished group of colleagues representing academia and government, and focus on an issue of considerable current and future consequence to the network of Canadian settlements.

Canada is a highly urbanized country where, by the end of the century, some 80 percent of all Canadians will live in urban settlements and half of this proportion will be accounted for by the major metropolitan areas—Montreal, Toronto, Vancouver, Winnipeg, Calgary and Edmonton. The most telling graphic evidence is supplied by the two contrasting maps shown. One delineates Canada in a conventional cartographic fashion through a Lambert conformal conic projection, emphasizing the land area of the provinces, thereby establishing the federal/provincial relations on a territorial basis. The other map using isodemographic projection shows Canada as a nation of cities, by using areas of the map units proportional to their population. The isodemographic map reveals the dominance of Canada's metropolitan areas and the preponderance of urbanization as the economic reality of confederation.

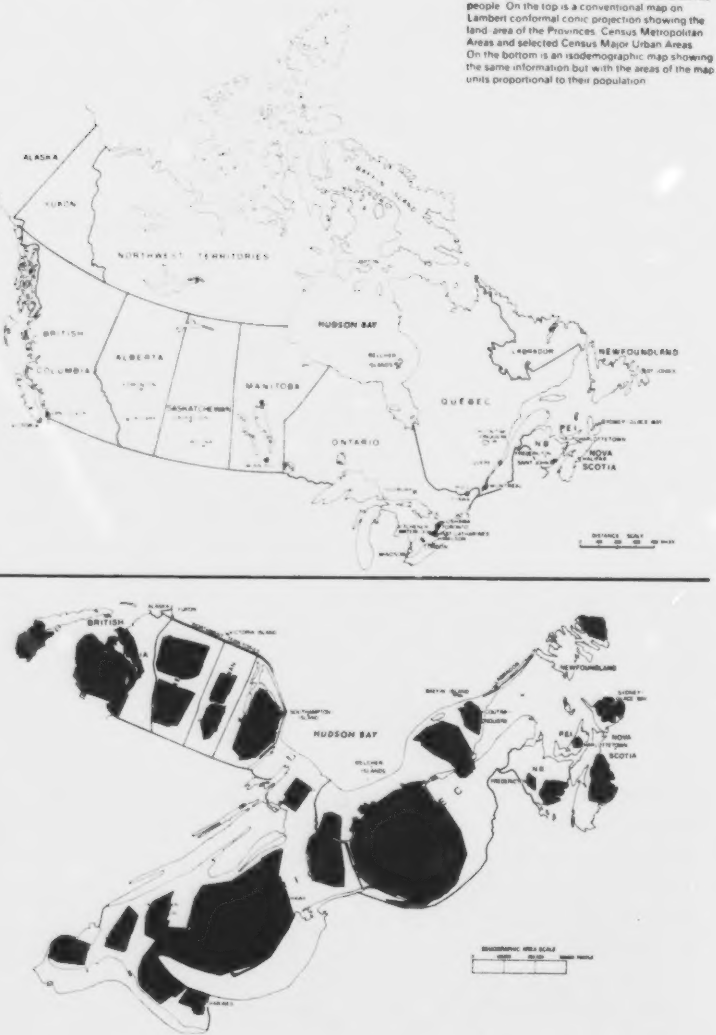
Traditionally, and up to and including the 1982 Constitution Act, Canada's settlements large and small, have been the creatures of provincial governments. The papers in this publication review this relationship and speculate on whether the 1987 Meech Lake Accord is likely to change this traditional relationship explicitly or implicitly. In view of the dominance of Canada's major metropolitan areas upon its total economy and population distribution, there has been a growing concern over recent years for a change in the status of cities and towns, so as to increase their ability to manage their urban affairs independently of their respective provinces and with substantive accountability to their own constituents. While these issues have been discussed, no concensus has emerged and the municipalities of Canada are still dependent administrative units within provincial jurisdictions as established initially in the BNA Act 1867. While the issues that culminated in the Meech Lake Accord and continuing subsequent public debate on further amendments and changes have had considerable public attention, Canada's cities and towns themselves have not chosen to enter this debate. The 1982 Constitution Act, the Meech Lake Accord and the

Langevin final formulation of the constitutional changes represented a unique opening-up of the process of deciding the kind of country Canadians wish to have for the next century and beyond. To date it has been entirely a dialogue between the federal and provincial governments. It seems curious that the 4,500 municipalities large and small have not taken this opportunity to assert themselves and enter the debate and thereby assure themselves of a legitimate and constitutionally confirmed place in confederation. It is the cities and towns of this country where Canadians live and make their living. Therefore the institutional and constituional structure ought to reflect this urban reality.

The authors of the papers in this publication are "expert observers" and specialists in their own field. They offer thoughtful papers, supported by valuable analysis of the many factors in the Meech Lake Accord that relate to the urban condition of Canada. The seminar also afforded a welcome opportunity for a wide-ranging discussion amongst participants, panelists and Chairmen of sessions. Everyone's participation and subsequent editing of papers is deeply appreciated and particularly the work of the indefatigable editor of papers, Mrs. Hilda Symonds, whose personal contribution during and subsequent to the seminar, made an important contribution to this publication. Mrs. Shirley Marcus was responsible for the production of this publication and contributed invaluable technical skills to the ultimate publication of the proceedings.

H. Peter Oberlander
Director
Centre for Human Settlements
June 1988

Figure 1
Canada: its land and its people



Two cartographic faces of Canada: its land and its people. On the top is a conventional map on Lambert conformal conic projection showing the land-area of the Provinces, Census Metropolitan Areas and selected Census Major Urban Areas. On the bottom is an isodemographic map showing the same information but with the areas of the map units proportional to their population.

From: *Isodemographic Map of Canada*, L. Skoda and J. C. Robertson, Ottawa: Lands Directorate, Department of the Environment, Geographical Paper No. 50. 1972.

PART I

INTRODUCTION: PERSPECTIVE

A NATION OF CITIES:
The Urban Perspective

H. Peter Oberlander

Canada is a country in the making: this is often its major asset, sometimes its temporary liability.

Many of our students at UBC come from Asia and Africa and are usually surprised to find that Canada, while born as a country 120 years ago, was without a flag, without an anthem and without a constitution until recently. Despite enormous efforts, the flag took 100 years to be designed and agreed upon, the anthem 110 years to achieve its bilingual form and recognition, and the constitution took 115 years and is still changing quite radically.

The Meech Lake I first knew was a peaceful, summer retreat of sandy coves for the middle range of civil servants and their families trying to escape the hot, humid, stifling summer of Ottawa. Meech Lake is about an hour's drive from the nation's capital, and is characteristically cottage country, where mothers and children summer for two or three months, fathers commuting daily or for the weekend, and where the loudest noise was the buzzing of the horsefly or the swatting of the mosquitoes! All this changed some fifteen years ago when Canada's Prime Minister chose one of these idyllic cottages as a summer residence on a very much reduced model of Camp David. Now, an endless line of black limousines, bringing and fetching dossiers, petitioners, politicians, and v.i.p's has begun to transform its idyllic past into headline news. Most recently this happened when these limousines brought the premiers of Canada's ten provinces to Meech Lake to strike a constitutional accord, by amending and radically changing the 1982 Constitution Act.

Meech Lake made history, whether history was made at Meech Lake remains to be seen. In fact Meech Lake, the noun, has become a verb: to 'Meech Lake' is currently a candidate for inclusion in Canada's

Webster's Dictionary, on the presumption that to 'Meech Lake' is to cajole, to urge, to convince (and succeed) by giving-in or trading real power for political unanimity and symbolic consensus. What happened at Meech Lake in simple terms is that the power to govern Canada passed from the centre to the periphery: why did this happen? It was to persuade Quebec to (re)join confederation by signing the 1982 Constitution Act and thereby achieve a further degree of uniqueness in managing its own future on its own terms. The final communique of the historic Meech Lake meeting of the Prime Minister and the ten premiers on April 30, 1987 explains it by saying: "To allow Quebec to resume its place as a full Participant in Canada's constitutional development." The Meech Lake agreement recognises Quebec as a distinct society within certain limits; however, to achieve this reallocation of power everything else offered to Quebec in line with its original five demands, including a veto over all future amendments, was also offered to the other provinces and obviously accepted. While Meech Lake was and continues to be a watershed, to coin a phrase, the process of moving power from the centre to the periphery has existed for more than sixty years. In fact twelve times since 1927, governments in Canada have tried to patriate what served as our constitutional instrument, the BNA Act of 1867, and also to agree on an amending formula to satisfy changing political requirements. It has been an inexorable process characterised by frustration, political impasse, and some cumulative success, but now, since the Meech Lake Accord the process has become irrevocable, irreversible, and above all enshrined in Canada's new constitution and buttressed by new institutional arrangements.

Is the shift from centre to the periphery and consequent irrevocable institutional structural changes, progress for Canada, progress for a country highly urbanized and industrialized, anxious and required to act at home with conviction, national unanimity and the strength commensurate with Canada's political ambitions abroad? The answer is yes and no, and perhaps by the time I have completed my presentation it may simply be "maybe."

On the *yes* side, it is clear that to achieve unanimity among the ten provinces and the federal government is a remarkable and indeed historic achievement. Ottawa and the provinces have agreed on six issues:

Quebec as a Distinct Society; Immigration; The Supreme Court of Canada; Spending Power; Amending Formula; and the 'Second Round'.

These items have been dealt with in some detail in the presentation by Norman Tarnow which follows, and in an Appendix to this publication which presents, in layman's language, a guide to the provisions of the Accord.

Agreement on these six items initiated at Meech Lake was transformed on June 3, 1987 into a Constitutional Resolution with Quebec's full agreement plus a continuing process, to review and strengthen constitutional evolution in Canada. No mean achievement!

On the *no* side, the assessment depends on what kind of Canada one envisages for the future. Will it remain a single, united, Ottawa-centred federation, or will it become a "community of communities" in the phrase of Canada's Secretary of State for Foreign Affairs, Joe Clark? Or worse, will it deteriorate into what Robert Fulford, an eminent Canadian editor called "a loose collection of ten independent duchies"?

The Meech Lake Accord and its constitutional formulation clearly moves the power to govern further from the centre to the ten premiers, and that seems to have been the price to be paid for Quebec's signature on the 1982 Constitution Act.

In simple terms the new agreement strengthens the provinces in three ways.

1. Under 'spending power', provinces will be able to opt out of any future national shared-cost program and obtain cash compensation instead, or as Canada's former Prime Minister Trudeau puts it:

> The principle of withdrawal accompanied by 'fair compensation' is to be applied to all new shared-cost programs. This will enable the provinces to finish off the Balkanization of languages and cultures, with the Balkanization of social services. After all, what provincial politician will not insist on distributing in his own ways and to the advantage of his constituents, the money he will be getting painlessly from the federal treasury?

2. Under 'appointments to the Supreme Court of Canada and Canada's Senate' the provinces will determine who the candidates are and thereby ensure that they will represent provincial priorities. Again, to quote Trudeau: "from now on the Canadian Government won't be able to appoint anyone to the Supreme Court and the Senate, except people designated by the Provinces." This, he suggests, provides for each of the provinces a constitutional veto and also gives them an

absolute right of veto over parliament since the Senate will eventually be composed entirely of persons who owe their appointments and therefore their loyalty to the provinces. It also transfers supreme judicial power to the provinces, since Canada's highest court will eventually be composed entirely of persons put forward by the provinces.

3. Under "second round arrangements", the First Ministers' Conference will become an annual event, entrenched in the constitution and create a *de facto* parallel government, presumably with its own parallel public service, essentially conferring to a committee of eleven first ministers ultimate power to govern Canada.

Meetings of First Ministers began as casual, occasional events geared largely to public relations and engaging the public interest in the political process. It was the Parliament of Canada and the ten legislatures who made the laws, created policies, raised funds and were accountable to their diverse constituencies. To enshrine First Ministers' Conferences as an element of Canada's constitution clearly weakens the role of the House of Commons in Ottawa, reduces its decision-making powers and moves considerable political strength from the federal parliament to the ten premiers and their legislatures. Perhaps in some very fundamental way, parliamentary democracy as we have known it is changing into a process of bargaining and accommodation between the eleven first ministers, and that often accompanied by full television coverage, instant decision-making and essentially "playing to the galleries."

The long continuing process of governing Canada is often seen as a series of swings from an Ottawa-centred to a provincial-centred system. During the last fifteen years de-centralization has held sway. How long can this continue, how long can Canada continue to govern itself, and how soon will Canada be a country held together by taking it apart?

How does Meech Lake and all it implies affect the cities and towns in Canada and the network of settlements they represent? Historically, three elements are of importance.

1. Urbanization is clearly the over-arching national phenomenon in Canada. More than 80 percent of all Canadians live *in* cities and towns and all of us are making our living *by* the city. Regardless of where we live, our values are urban, our aspirations and economic driving force are urban. More and more Canadians live in fewer but bigger cities by choice, as the recent 1986 census clearly indicated.

2. Under prevailing constitutional responsibilities, urban problems and

their solutions have traditionally been assumed to be the exclusive responsibility of the Provinces. Section 92 subsection 13 of the BNA Act 1867 gave us the phrase of "property and civil rights" which covers all elements of land-use planning, housing, infrastructure, and related public policy initiatives. This essential provincial power and responsibility has not been changed or affected by subsequent constitutional amendments, including the Meech Lake Accord.

3. While the cities and towns are clearly within provincial jurisdiction the federal government historically has been in the forefront of developing policy and program solutions to housing and related issues through its superior power of the purse. Since 1935 the federal government has initiated an ever-expanding housing legislation, often including land-planning requirements and infrastructure installations which have shaped post-war urban Canada.

Provincial jurisdiction and federal superior financial resources have dealt with the reality of Canadian cities by accommodating themselves to the historic division of political and administrative powers. Canada as a system of cities clearly stretches beyond the jurisdiction of the provinces, largely because our economy operates within and through the cities, regardless of provincial boundaries and because most Canadians live in the cities for good economic reasons and by free choice.

Established research during the last 30 years has demonstrated the network of Canadian cities as interactive and therefore highly interdependent. That dynamic linkage does not recognize provincial boundaries and indeed reaches across and beyond the nation state. Therefore a national urban policy paralleling a variety of other national policies seemed needed and various attempts have been made during the last decade. The Meech Lake Accord and its subsequent enactment in the constitution makes a national urban policy no longer possible.

On the one hand the Meech Lake spirit seems to lack a common national purpose and the Accord has not created or even accepted a common national vehicle for program development and program delivery. The national purpose seems to be subordinated to the provincial destinies, and national goals and objectives appear to emerge as residual aspirations. Comparable experience will probably characterize national industrial policies or national transportation policies. Difficult as these were to fashion with a strong Ottawa-centred government, the movement from the centre to the periphery makes these policies no longer possible. The same dilemma will probably characterize urban programs since the provinces are now able to opt out of programs that they no longer consider their priorities. Consequently, while we are probably not going to be able to develop and achieve a national consensus for national policies, we are likely to witness current or future programs in such fields as housing or infrastructure installations, to vary radically between provinces. Canada may become a checkerboard of programs and actions with widely varying standards of urban environments and the availability of public support especially for those least able to look after themselves under the process of urbanization.

This may become particularly serious because it is clear that as Canada increases its economic strength at home, and its political authority abroad, nation-wide policies and programs will become more and more urgent. These national policies and programs will be required not for purposes of strengthening Canadian nationalism, but to deal with Canada-wide social and economic issues and the widely varying capacities and willingness of the provinces to deal with them. As long as Canada is one economy and one society, it needs a federal government with the political will and the institutional ability to deal with the Canadian system of settlements, interdependent and interactive. The Meech Lake Accord weakens this ability and threatens the continuity of Canadian programs presently in place. This is serious for two reasons.

Firstly, public policy interest in urban issues has already declined during the last decade, we are now preoccupied with energy policy, free trade, and constitutional changes.

Secondly, the provinces historically have shown little interest or concern for their own cities. In fact Montreal, Toronto, and Vancouver, as well as Edmonton, Winnipeg, Regina and the rest of Canadian cities as they grew have represented a threat to the political power of their respective provinces. In addition most provincial legislatures, appear to be in the hands of the rural electorate and dominated by non-urban values and priorities.

The Meech Lake Accord fundamentally redistributes the power to govern Canada. As we know, political power is never static, its ebb and flow is between those who gain power and those who lose it. Institutional allocation of power through constitutional rearrangements clearly benefits some members of the system at the expense of others. The Meech Lake Accord decisively provides for de-centralization from the nation's capital to the provincial capitals. This is being proposed and accepted in the name of Canadian unity and maybe it is a price well worth paying. But if decentralization has its own momentum and merit, and will be the Canadian way of dealing with a very diverse economy and an even more diverse geography, how about continuing this decentralization process, and moving from decentralization federally/provincially, to devolution of power from the provinces to their respective major cities? That would be a logical consequence, and provide systematic continuity and encourage in the cities an appropriate measure of self-government so as to deal resolutely with their own complex futures. If the "sovereign" province of PEI with its 100,000 population is entitled to increased provincial government powers under the amended constitution, why cannot Toronto or Montreal with their respective 3 million people be accorded a comparable measure of self-government enshrined in the Constitution? Perhaps Meech Lake can provide the historic opportunity for redressing the historically totally unfair allocation of governmental powers between federal, provincial, and municipal jurisdictions, including demographic representation and appropriate taxation?

Throughout the last 120 years the ten provinces were never equal partners in Canada, neither in population, nor in territory or in resources, and they are certainly not ten equal partners today, no matter how the Meech Lake Accord attempts to ignore this reality. The size and boundaries of the ten provinces and the two territories are the results of an agrarian economy and a rural society of 120 years ago. The new constitution, now made in Canada and anticipating the future, ought to include a re-structuring of Canada that is fully urbanized and industrialized. If Canada's future is tied to a free-trade agreement with the U.S., the network of strong self-governing cities and urban areas from coast to coast will give it the reality necessary for its success.

The twenty-three CMAs represent an economic and social system that ought to find a realistic reflection in the 1987 Constitution. Perhaps the Meech Lake shift of power-to-govern in favour of the provinces should be completed by setting in motion the appropriate devolution of relevant powers to and for the cities which constitute Canada.

A tall order indeed, but as an essential start it could become a new research agenda for scholars interested in Canada's political and settlement future. Now that we have a flag, an anthem, and an emerging constitution, perhaps we can begin to achieve effective self-government by sharing it with the cities and towns that make up Canada's settlement system. This I believe is the challenge to the provinces that have now grown in power substantially and therefore ought to be able and willing to share some of this power with their cities and towns that give them strength, stature, and continuing economic growth.

THE QUEBEC ROUND—A Bureaucrat's Perspective

Norman Tarnow

I was just thinking about Meech Lake and the various ways in which we have all come to it. First of all, I want to mention to you a place called Mont Gabrielle in Quebec, because it was there, in May 1986, that the present government of Quebec first really clarified its constitutional position. That is where Meech Lake really began—at a conference sponsored by the Institute of Intergovernmental Relations, and attended by various representatives from the academic community and from government. It was an interesting and unique conference, because since then the academic community has been excluded from the process which has since been left strictly to the politicians. In all the previous constitutional discussions of the 1960s and 1970s, and into the early 1980s, one would meet in a formal setting around a table with one's officials, ministers, and advisors. What has happened with the current administration in Ottawa is that there has been a whole new approach to the negotiation of crucial federal/provincial and constitutional issues—an approach that is much more informal. Because we have a Prime Minister who prides himself on his negotiating skills, he did not want any officials in the room (I think that perhaps there were a few of his own, but nobody else could have any). When I first received a telex from Ottawa saying that the Prime Minister had invited the Premier to Meech Lake, I thought—what a way to corner the poor Premiers: put them in a room with the sharpest negotiator, with all the expertise of Ottawa, and have them leave behind all their own officials! So our Premier went down there himself with his Principal Secretary, and I am not sure whether he read the briefing note that was prepared for him. The rest is history.

I must tell you that, during the time from May of 1986 to April 30, 1987, which was the Meech Lake meeting, a pattern had emerged. The

Federal government and Quebec would get the other Premiers into a room over a meal and some wine, and there would be a number of topics on the agenda, such as Free Trade. At the end they would talk briefly about the constitution, and suddenly a draft communique would emerge, which the federal government and Quebec had prepared the night before. This would be put before all the Premiers, by then in a jovial and agreeable mood, and with nobody in the room who really knew the significance of the words that were being agreed to. We ended up with a number of these communiques, some of which led up to the constitutional change. One from Edmonton became the ***Edmonton Declaration***.

What we were seeing was a systematic limiting of the agenda. Quebec came out with five items, and of course the federal government knew that the last time the constitution had been discussed there had been twelve items on the agenda, and most of these were taking power from the federal government to the provinces. There was nothing more horrifying to the federal government bureaucrats or, I am sure, to a federal minister! So when they saw that Quebec had come up with this list of five, there was an audible sigh of relief. However, they knew immediately that all the other provinces, especially British Columbia and Alberta, would want to get their items on the agenda. (We had property rights and Senate reform, and Newfoundland had fisheries, and so on). Quebec was interested in success. They felt that, if the thrust failed, it would be a great triumph for separatism. This was what they told us, especially in the sessions we were to have later with the Quebec officials. It was a case of please sign here—now! Of course the federal government had an interest in keeping the agreement small, simple, and, hopefully with the least amount of transfer of federal power to the provinces.

So Meech Lake was typical of the discussions that we had, and it involved a very different process from any that had taken place before. Then eventually we had the Langevin Block meeting, which ws really the concluding session, because between April 30 and June 3, when the final text came out, there had been quite a lot of to-ing and fro-ing. There were various things that Quebec was starting to get cold feet about, and Premiers Pawley and Peterson were expressing considerable concern about this great shift of power, and so on.

I must tell you, as a western advisor on the Constitution for over ten years, that there were two very interesting things that came out of the

Meech Lake event, besides the actual agreement. One was the backlash from central Canada, that is Ontario and Manitoba. They came out and said: "Oh, we must have a strong central government, and we will not go along with this." We knew that Manitoba has usually favoured anything that Ottawa wanted: Manitoba would always say "yes sir." Ontario always tried to play the moderator, statesman; Premier Davis was very good at that. He had a very nice smile. We in British Columbia did not always appreciate Premier Davis' smile, because behind it was a "no." There was no way that Ontario was going to give up its twenty-four seats in the Senate to try and redress the balance so that B.C., with five could have more. That was quite startling. Then, during the recent discussions Ontario, who had always been "the honest broker", came out and tacitly said: "we want the power here in Ottawa, which happens to be in Ontario, and we like it that way, we don't like it going anywhere else, and we will stop this deal from going ahead"—which meant that Quebec would be left outside the Constitution! It dawned on us that if they would do that to Quebec, which was one of the founding participants of Confederation, how could we ever get the kind of reform that we have been trying to get for us here in B.C. and Alberta? If they cared so little about Quebec, they cared even less about us.

The other amazing thing was former Prime Minister Trudeau's intervention—coming out of his silence and telling us his inner motivation. It really was an explanation of his whole game plan and direction during the famous constitutional negotiations of 1980 and 1981, which led up to that great debacle in the Supreme Court of Canada, when we were in a constitutional crisis and almost went to London. He did anything and everything to amend the constitution the way he wanted to, including ignoring the fact that the provinces had any say in the matter. And he came out and told us so, through his letter in the *Globe and Mail*, and the remarkable interview that he gave on the radio which was historic and incredible.

So the foregoing is an informal introduction of the background to all of this, and now I have some remarks on the text of the Meech Lake Accord, which I will cover quickly.

As a senior public servant, involved for over a decade in advising the government of British Columbia on constitutional reform and other major federal/provincial issues, I have not always been in a position to speak publicly on the constitution and similar matters. Therefore, this is one of the rare occasions when I can. As a matter of fact when I think of how some of the material I have written for my political masters has been received by the public in the past, this civil service anonymity may have been an advantage!

As I am now an independent public affairs consultant, I am able to comment on this issue in a more public way, and I am pleased to take this opportunity to join briefly in the debate on Meech Lake. It may not come as a surprise to you, knowing my background, that I do not view the so-called Meech Lake agreement as a great give-away of central government power to the provinces. Indeed, if one bears in mind the long-standing constitutional reform proposals of Quebec and the other provinces that go back into the 1960s and 1970s, and even the constitutional discussions that we had, we got into some very substantial discussions. We had draft texts on twelve items, and moved quite a way until, in September 1980, the Prime Minister saw that we were not going along with the Charter and said "my way or the highway," and everything fell apart. But, when you bear in mind the history, an argument can be made that the Meech Lake Accord does not go far enough in redressing the centralist bias in the Constitution. If you look at the Accord, and you are aware of the background, it is really not meant to be the final capstone of constitutional reform in this country. It is merely Quebec's conditions for becoming part of the constitutional family so that it will now participate as a full partner in future discussions on the constitution. That is what we were always told by Quebec; because when we said to them "we want our issues discussed now," they would say—"don't worry we'll talk about them in the second round, once we are in and are participating at the table." You can see that in the text itself; they talk about future constitutional discussions. As a matter of fact, we will now have annual constitutional discussions institutionalised in the Constitution. This is a first.

Now, I want to make a few observations on some of the specifics of the Agreement that the first ministers signed on June 4, 1987. The first one, of course, is the provision that you will be hearing about a lot, and have already heard about, and it is on the distinctiveness of Quebec. Close analysis of the language used, leads me to believe that this provision will have more of a symbolic than any real judicial effect. I know a lot of people are worried about what the courts are going to do, but there is this phrase at the beginning: "*The Constitution shall be interpreted in a manner consistent with . . . the recognition of the existence of*

French speaking Canada, centred in Quebec, but also present elsewhere in Canada, and English speaking Canadians concentrated outside Quebec, but also present in Quebec . . . Interpreted in a manner consistent with this constituting a fundamental characteristic of Canada and the recognition that Quebec constitutes within Canada a distintive society." Now, I have been involved in doing a little drafting, and when we told the court to do something, we would be quite straightforward; in drafting you use few words—the fewer the better. So why have these words "in a manner", "shall be interpreted in a manner"? It qualifies what follows "to interpret", it waters it down. Again, look at the operative language in the following section. We see that all the provision does is to affirm the role of parliament or the legislature with respect to preserving the so-called fundamental characteristic. Affirm the role! Now, when you have a constitution, and I have not found any other section in the constitution that talks about "the role," what they could have said was "the power" or "the right", but what they said was "the role." Again, weak language. It does not do very much for me, it is symbolic. We do have some symbolic language in the constitution; we have commitments to do things which have no enforceability in other parts of the Constitution. So what I am saying is that what we end up with is *neutral* language, recognising what is really a factual description of the Canadian and Quebec sociological reality. Then there is a clause that says that this sections does not alter the existing division of powers and thus, in my mind, has no legal effect on the exercise of legislative authority or other powers of parliament or the legislatures. So it is really a symbolic provision.

Looking at the theme of this conference, I wonder what legal effect the Accord will have on local government in Canada. Certainly, there may be some non-legal effects of it which we will hear about later.

The next section deals with the nomination by the provinces of senators as representatives from those provinces, until substantial senate reform takes place—if it ever does! Again, I do not think it is all that de-centralising, as some have said, when it is considered that the person chosen "must be acceptable to the federal government." Conceivably the name or names put forward by a province could be rejected a number of times before a person is considered by the federal government as acceptable to sit in the Senate. So they can be rather persuasive—they can keep saying "we don't like Joe Blow, we want somebody else who's more suitable." Again, I do not see very much impact on municipal government here, but clearly there is more of a provincial say in the membership of what has always been a body that was representative, or was supposed to be representative, of the various constituent parts of Canada anyway, as in the United States Senate.

Let us go on to the section dealing with immigration. I think that is one that could have a great potential effect on Canadian local government and Canadian settlements, depending on the terms of the agreement made with the provinces. I do not really suspect that there are going to be too many agreements, except with the province of Quebec. At present, all provinces have concurrent jurisdiction with Ottawa over immigration into a particular province, subject to federal paramount authority in the event of a conflict in the legislation. An interesting point is that the Constitutional Accord would appear to allow an agreement so made to have effect, notwithstanding federal legislative authority over immigration, regardless of certain provisions of the Constitution. That is quite an innovation. Quebec is one of the few provinces that already has an immigration agreement with the federal government and it already has exercised legislative authority over immigration. The other provinces have not yet touched it. There is no British Columbia Immigration Act, and I do not think there will be. I remember when the immigration agenda item came up that Ontario kept saying "don't get it near us, we don't want to have anything to do with it." Therefore I think it unlikely that for some time many provinces will be negotiating the type of agreement contemplated by the Accord—if ever. I hope that other speakers who are better versed in demographics will be touching on this provision later.

I would now like to deal with the section concerning the Supreme Court of Canada. For decades the provinces and the federal government have been discussing ways of ensuring provincial input into the appointment of members of the Supreme Court of Canada. That Court is the final arbiter of the division of powers between the two orders of government and, with its increased authority over all governmental action and laws as a result of the Charter, it has been felt that having these appointments exclusively federal was unfair and promoted an appearance of federal bias in the membership of the Court. Now this bias has never been proven—but it is the old adage—justice must appear to be done. Just as an aside here, often the provinces get a little bemused at the fact that all the judges in the superior courts are appointed solely by the federal government. This also seems a bit unusual in a federation as vastly spread out as ours, but that is another topic for the second round of constitutional discussions. Again, as in the case of senate appointments, the Accord provides that the names of persons submitted by a province to fill a vacancy must be acceptable to the federal government which continues to have the final say as to who is or is not to be a member of the Supreme Court of Canada. They also have the exclusive authority to decide who is to be the Chief Justice which can be very significant—since the Chief Justice can decide who does what, who sits on what important case or whatever. Another thing to note is that not every province will at any given time have his member on this nine member court. It is just completely impossible when you think that Quebec has three members at all times. Ontario always wants to copy Quebec so that leaves the rest of us with the remains. Until recently, with the appointment of Mr. Justice McIntyre, British Columbia did not have a member on the court for about thirty years—so once every thirty years we may see somebody there from our province!

During previous constitutional discussions, the provinces sought the right to refer important questions directly to the Supreme Court—a power which only the federal government has under their *Supreme Court Act*. This gives it quite an advantage, especially in major jurisdictional questions between governments such as in the B.C. and Newfoundland offshore resource reference cases. Certainly the way the question is asked has a lot to do with the outcome. For example, in the case of the Newfoundland question, the federal government asked the Court "Regarding this little area out on the Continental Shelf off Newfoundland called Hibernia, is this under Newfoundland or federal government jurisdiction?" Newfoundland also put a reference to its Court of Appeal (they could not refer a question to the Supreme Court of Canada), and its reference started out from the shore of Newfoundland and went out from there, it was more staggered and got the Court a little more warmed up to the answer that Newfoundland wanted. And, by the way, in the Court of Appeal, Newfoundland did succeed in getting the Court to rule that the Territorial Sea around Newfoundland was in fact Newfoundland's. Here we had an opportunity to do something to change the authority of the Supreme Court of Canada and what did we do? We did not get the right to have references; we ended up with a little provision in the Meech Lake Accord which entrenches the federal government's exclusive right to refer questions to the Court. So we are stuck with that and we will be stuck with it forever because, as you may know, it now requires unanimity for any changes to the Supreme Court. Again, I wonder what will be the effect on local government of these changes to the process of appointment of members of the Supreme Court. I think it is all rather remote. But of course, a judgement rendered by the Court in a municipal matter would have an effect, so it is more indirect than direct.

Now I want to speak about the spending power, which is one of the most controversial issues. A lot of people have been agitated about it—Mr. Trudeau, Member of Parliament Don Johnston, and so on. At present there is no provision in the constitution, and there is little case law, supporting the spending power of the federal government in areas of provincial jurisdiction. Although over the years everyone has assumed its constitutional validity, there were a couple of challenging cases going through the court system recently, but I do not know where they stand now. What this power has done is to allow the federal government to ignore the division of powers in our federation by providing a grant of federal funds on condition that a program accord with federal stipulations. This effectively regulates a program, though it clearly lies outside federal legislative authority. We see this in health, education and so on. It is very nice to have federal money but, by the terms, they end up regulating the area. I was reading in the paper tonight (January 7, 1988) a letter to the editor from Andrew Petter who teaches at the University of Victoria. He is decrying the fact that we could let this free trade agreement be implemented by the federal government. How could we? It would mean that the federal government could implement any treaty it wanted, whether it was in federal or provincial jurisdiction; it could completely bypass the division of powers and that this was a terrible thing. Yet, through the spending power, they have been doing it for years and we, as provincial bureaucrats and provincial politicians, have been pulling our hair out for decades on this. The federal government comes in and they say "here it is, this is the agreement, do you like it or don't you like it? You don't like it? Thank you, goodbye." Then they go to parliament and they say "we've consulted with the provinces" and pass it. There is no compulsion. There is nothing that says they have to really sit down and talk to us and come to an agreement, because we have no clout. They can do what they want. And so for years, we in British Columbia particularly, have wanted to have some say in controlling this spending power; some way of getting an agreement, some way to really make a deal. We thought that through senate reform we could do this. We could have the senate look at these things that had an impact on the provinces and the senate could stop these abuses. A senate that was composed of provincial government representatives could stop them and the federal government, knowing that, would sit down and deal with us at the early stages of these programs and we would come to an agreement.

Let us examine the text of the spending power provision in the court. Note firstly that it only applies to new federal programs—it does not apply to changes to existing programs. There will not be that many more federal initiatives to spend a lot of money that have not been invented already—especially in this time of deficit reduction. Maybe in another fifty years, who knows? So right there, it is pretty weak. Then, the section goes on to say that it only applies to national programs so that, if Ottawa proposes a program for some provinces but not all provinces, arguably the program does not fall within the provision because it is not national. If they want to make a deal with Ontario and Quebec, it does not fall into this. Next, these must be shared cost programs, so that, if Ottawa is providing all the money for a program, it would apparently not be covered by the provisions. Then we have another proviso—there is just proviso after proviso—the program must be in an area of exclusive provincial jurisdiction. It is not always an easy task, to determine what is within exclusive provincial jurisdiction and what is within the current federal jurisdiction and what is in the grey area in between. We may have to end up referring to the court a question such as: "Is this program in exclusive provincial jurisdiction or not?" before they find out whether this provision even applies. Look at the last qualifier in the section. It is that the province must carry on a program or initiative that is compatible with national objectives, whatever that may mean. Where a province can meet all these tests and qualify, what is the big payoff of this great spending power limitation section? It is provided with "reasonable compensation in order to run a similar program should it not wish to participate in the federal program." The fact that at the end of the day, a province has to mount a program similar and compatible within the national objectives as the federal one is, in my view, a major disincentive for the provinces to avail themselves of the section in the first place.

I believe that the spending power provision is so full of hurdles and qualifiers that few provinces will bother to avail themselves of it—except perhaps Quebec for symbolic reasons. One wonders whether at the end of the exercise the provinces are any further ahead in terms of having some real control over the use of the federal spending power in areas of provincial jurisdiction, or do we rather have here an illusion that they are?

I will leave my comments on the spending power provision with this question which is particularly appropriate for this seminar: is there anything in the new provision to stop the federal government from re-establishing a Ministry of State for Urban Affairs and/or making grants directly to municipalities? I do not think there is.

Turning briefly to the changes to the amending formula which would also now require unanimity rather than the seven province consent formula for future reform to the Senate and Supreme Court of Canada, we see that the requirement for unanimity for the establishment of new provinces makes it that much more difficult for the Yukon and Northwest Territories to some day become provinces. This amendment will certainly have some effect on the evolution of local government in the territories.

Another section of note is that which provides for "reasonable compensation" to a province which does not transfer a particular provincial power to the federal government. For example, let us say that all provinces except Quebec agreed to an amendment to the constitution that transferred legislative authority over municipal institutions to the federal government—which would also assume the financial costs associated with such administration. In order to redress the fiscal imbalance resulting in the case of the one province which continued to have legislative and financial responsibility for municipalities, the federal government would transfer a "reasonable" amount of funds to Quebec to make up for the fact that it was the only province that continued to have to meet this expense.

Although there has been concern by some that this provision could lead to the "balkanization" of Canada, I doubt that the section will be used very frequently at all especially when we consider that future amendments transferring powers from the provinces to Ottawa will likely be few and far between in any event.

Finally, the Accord provides for the entrenchment of annual constitutional conferences to consider such matters as senate reform and fisheries. Municipal governments might well wish to use the occasion of these annual constitutional conferences to lobby for more local government powers.

There is much that could be said about the Meech Lake agreement and constitutional reform in general. However, I trust that this brief overview of some of the highlights of the Accord will have helped to set the stage and provoke some thought in anticipation of the following discussions.

A FRAME OF REFERENCE—AFTER ENTRENCHMENT: THE CONSEQUENCES FOR LOCAL GOVERNMENT

William T. Lane

This paper was written to provide a frame of reference for the discussion of "Meech Lake: From Centre to Periphery, The Impact of the 1987 Constitutional Accord on Canadian Settlements." It defines a municipality in the Canadian context, notes many of the peculiarities of the Canadian Constitution, and explains briefly, the drift, over the last 120 years, away from a strong central government in this country. Reaction to the historic growth of provincial responsibilities in the face of inadequate tax resources is outlined. Finally, the paper provides some grounds for speculation about the impact of the Meech Lake Accord on Canada's settlements and its municipal structure.

"WHAT IS A MUNICIPALITY?"

Serious discussion about local government inevitably begins with the question, "Exactly what is a municipality?" In Canada, it is traditional to quote Chief Justice Mulock in the case of *Millmine* v. *Eddy*:

> A Municipal Corporation, in its strict and proper sense is the body politic and corporate constituted by the incorporation of the inhabitants of a city or town for the purposes of local government thereof.[1]

Ian MacKay Rogers, in his well-known *The Law of Municipal Corporations*[2] offers a broader definition. Quoting *The Canadian Encyclopedic Digest*, he suggests it is a

> Body coporate constituted by the incorporation of the inhabitants residing within a defined area upon which the legislature has either directly or

> indirectly through some intermediate agency, confirmed corporate status, rights and liabilities including the right to administer through the agency of an elected council or other governing body, such matters of local concern as are expressly specified, or as are necessarily implied from the nature and extent of the authority inferred.[3]

In the Canadian context, local self-governments cannot be described as autonomous of the provincial legislature which created them. There has always been, to quote Rogers again:

> Some degree of restriction, either through the withholding of certain powers or the imposition of restrictions on the exercise of the powers committed to them.[4]

Local government is also inhibited from exceeding its delegated powers by an awareness that the courts may intervene if the council goes beyond its jurisdiction.

The powers of a Canadian municipality are considered to have a dual aspect in that a local council is:

> . . . entrusted with certain powers of government for the benefit of the inhabitants in their local or corporate limits (the municipal aspect) as distinct from the interest of the public at large. It is also given certain powers to be used for the benefit of the community at large as a convenient method of exercising some of the functions of government (the government aspect).[5]

To quote Chief Justice Meredith of Ontario in *Toronto Electric Light Company* v. *Toronto*,

> It is not to be forgotten that municipal councils are a part of the machinery for the civil government of the province, and that to them have been delegated many of the powers both of legislation and of administration which by *The British North America Act* are vested in the provincial legislatures.[6]

Finally, unlike the Common Law municipal corporations in England, local governments in Canada, with the possible exception of St. John, New Brunswick, are statutory creations of the provincial legislatures. It is a commonplace to state that the powers of a given municipality in Canada are to be found in their entirety in the enabling act (an omnibus municipal act or a city charter) of the province which created the local government in question. Apart from the implied powers which the courts have conceded to local governments to facilitate the specific delegated powers, municipalities have no other governmental authority. In other words, their legislative, administrative and quasi-judicial powers are to be found in the enabling provincial legislation or they do not exist.

PECULIARITIES OF THE CANADIAN CONSTITUTION

The enigma posed by the *Constitution Act, 1867* (formerly the British North America Act) is perhaps best explained by the relatively simple objectives of the Fathers of Confederation. There was acceptance of the system of parliamentary government in operation in the United Kingdom. The inheritance of the Common Law in both the public and private realm in the Atlantic Provinces and in Upper Canada and of the Common Law public law, coupled with the adoption of the Custom of Paris, in those parts of Canada which are now the Province of Quebec, seemed to have met general satisfaction. There was, then, "no need to create a comprehensive document, such as the Constitution of the United States, designed to cover all of the essentials of government within a limited number of carefully articulated sections."[7] Nor, apparently, was there any need to make special provision for civil rights and freedoms. Tarnopolsksy and Beaudoin noted that even before the entrenchment of the Canadian Charter of Rights and Freedoms in 1982 we had inherited, by way of the *Constitution Act, 1867*,

> . . . the civil liberties proclaimed by such documents as the Magna Carta, the Bill of Rights and the Habeas Corpus Acts. From 1936 to 1960, the Supreme Court had occasion to refer to certain express as well as implied liberties in the Constitution. Then, in 1960, Parliament enacted the Canadian Bill of Rights; Saskatchewan had already adopted a Bill of Rights in 1947; Alberta followed in 1972 and, in 1975, Quebec adopted its Charter as the most extensive one to date. In addition, all jurisdictions have enacted Human Rights (anti-discrimination) laws. All these Charters, Bills and Codes remain in force today, although none is constitutionally entrenched.[8]

Professor Hogg, in his book *Constitutional Law in Canada*, puts it more succinctly:

> The Canadian framers of the B.N.A. Act even eschewed the alluring American precedent of a bill of rights, and instead left the civil liberties of Canada to be protected by the moderation of their legislative bodies and the rules of the common law—as in the United Kingdom.[9]

Looked at in isolation, the *Constitution Act, 1867* is almost incomprehensible. As R.M. Dawson said decades ago:

> There are many vital things about the government of Canada (to say nothing of the Provincial Governments) which are not stated or even hinted at in the British North America Act, and even those matters which are dealt with in some detail are frequently given in such fashion that they become ambiguous and sometimes misleading. Thus, any earnest literal-minded student who would endeavour to learn about Canadian government by nothing more than a conscientious examination of the Act would be shocked to discover that the Dominion is ruled as follows:
>
>> The executive Government and authority of Canada is vested in the Sovereign, who is apparently represented by a Governor General (Section 9, 10). The latter is assisted by the Council, which he chooses, and summons, and removes, (11), and which advises him in his work (12, 13). The Sovereign is Commander-in-Chief of all naval and military forces in Canada (15), the Governor General appoints the Speaker of the Senate (34), and virtually all the Judges (96). He appoints all members of one house of the legislature (24), and those members hold office for life (29). The other legislative body, the House of Commons, is called together by the Governor (38) and this house can be dissolved by him at any time and a new election ordered (50). All money bills must first be recommended by the Governor before they can be passed by Parliament (54). The Governor may assent to legislation; he may refuse his assent; or he may reserve a bill for the consideration of the Queen-in-Council in Great Britain (55-57); and he may also disallow any Provincial Act or refuse his assent to any Provincial bill reserved for the signification of his pleasure (55-57, 90). The same general powers are exercisable by the Provincial Lieutenant-Governors, who are appointed by the Governor General and are accountable to him (58, 59, 90).[10]

Dawson further suggests that this "earnest literal-minded student", after careful reading of the Act might conclude that:

> Canada—appears to suffer under a dictatorship, the autocratic rule of one central figure, acting in the place of the Sovereign, who governs the

> Dominion with little reference to or control by the people. The fact that Canada is in reality a democratic confederation is to be recognized from the unwritten portions of the Constitution together with changes which have occurred since 1867.[11]

The problem at hand in the various pre-confederation conferences held in Quebec City, Charlottetown and London was to create a confederation of parliamentary jurisdictions within a federal parliamentary state. As Hogg has pointed out:

> . . . there are very important differences in the constitutional law and governmental practices between "federal" states such as Canada, Australia and the United States on the one hand, and "unitary" states such as the United Kingdom and New Zealand on the other. There are a set of distinctive issues concerning the distribution of legislative power, the distribution of executive power and the administration of justice that have to be resolved in each of the federal states, and that are unimportant or non-existent in the unitary states.[12]

In the event, nearly all of the powers of a sovereign state were distributed between the parliament of Canada and the legislatures of the several Provinces. It is customary to quote the following subsections of section 92 of the *Constitution Act, 1867*, as establishing the right of the legislature of each province exclusively to make laws for the creation of local government:

> 2. Direct Taxation within the Province - - .
> 5. The Management and Sale of the Public Lands belonging to the Province - - .
> 7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province - - .
> 8. Municipal Institutions in the Province.
> 9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order for the raising of a Revenue for Provincial, Local or Municipal Purposes
> 13. Property and Civil Rights in the Province.
> 16. Generally all Matters of a merely local or private Nature in the Province.

THE DRIFT FROM STRONG CENTRAL GOVERNMENT

Although "The deliberate plan which was adopted in creating the Dominion of Canada was to form a federation of a highly centralized kind, and to that end certain special powers and functions were placed in the hands of the central governments,"[13] scholars generally agree that two tendencies have mitigated against the centralist ideal. The first was a series of decisions of the Judicial Committee of the Privy Council in London. This body, which was the ultimate Court of Appeal for Canada on constitutional questions from 1867 until 1949, favoured provincial power at the expense of those of the federal parliament. These decisions were, of course, merely ruling on questions of interpretation and did not involve any quasi-legislative reassignment of legislative power enumerated in the *Constitution Act, 1867*. In the words of Peter Hogg:

> Two figures dominated the course of decision in Canadian constitutional cases: Lord Watson, who was a law lord (and thus a member of the Privy Council) from 1880 to 1899, and Lord Haldane, who was a law lord from 1911 to 1928. They believed strongly in provincial rights, and they established principles which elevated the provinces to coordinate status with the Dominion, and gave a narrow interpretation to the principal federal powers (the residuary power and the trade and commerce power) and a wide interpretation to the principal provincial power (over property and civil rights in the province). The decisions of the Privy Council—the "wicked stepfathers of confederation" as Forsey calls them, were much criticized in English Canada (although not in French Canada) for their provincial bias.[14]

The second trend mitigating against a strong central government has been the emergence of Canada, in the last seventy-five years, as an urban rather than rural, industrialized rather than agricultural, society. This had the unforeseen effect of enhancing enormously certain provincial government powers, particularly those relating to social services, health care, education and transportation (within the provinces). This tendency, coupled with the disparity of resources between the ten provinces, led to the view of the federal parliament as essentially a taxing agency with the ability to transfer funds from economically favoured regions of the country to those which were less fortunate. One writer points out that:

> The growth of provincial activities has not only been marked by a full exploitation of their direct tax and other revenue-raising powers, but also by federal government encouragement and financial assistance. Federal conditional, shared-cost programs in social assistance and other areas of provincial jurisdiction, plus unconditional grants in the form of equalization payments, have contributed to the expansion and maintenance of provincial public services.[15]

FEDERAL TAXATION POWERS VS. PROVINCIAL RESPONSIBILITIES

Perhaps the best known example of the disparity between federal taxation powers and the demands on local government occurred in the Great Depression of the 1930s. David Williams, in his biography on the City of Vancouver's most colourful mayor, Gerald Gratton McGeer, described it as follows:

> The social tragedy of the Great Depression: loss of job led to loss of dignity, and loss of both led to penury. . . . desperate citizens were driven to accept handouts and relief payments. Many could not pay taxes on their houses, which reverted to the City's tax sale list, but since few buyers could be found, the City was stuck with thousands of unsold houses. The situation was so bad that in 1934, when 3,900 parcels reverted, the tax sale was indefinitely suspended. Often homeowners unwilling to face the ignominy of being sold up for nonpayment of taxes simply abandoned their houses.[16]

McGeer headed the delegation sent by the Association of Mayors to present resolutions directly to Parliament. The Speaker of the House of Commons refused McGeer permission to speak from the bar of the House. In Williams' words, "It was the old story—Parliament had no jurisdiction in municipal matters."

The turmoil which erupted from obvious inadequacies in Federal-Provincial fiscal relations resulted in the Federal Government establishing unilaterally the Royal Commission on Dominion-Provincial relations (1937). It was to examine the economic and financial basis of Confederation and the distribution of Legislative powers in light of the economic and social developments of the last 70 years. In what became known as the Rowell-Siroir Report, recommendations were made to shift taxation power to the Federal Government. At the same time grants were to be made to the Provinces to equalize Provincial revenues. The Federal Government was to assume responsibility for unemployment insurance and contributory pensions, and to assume full control of personal and corporate income taxes and succession duties, while taking responsibility for Provincial debts.[17] Perhaps in reaction, the Government of Quebec appointed a Royal Commission of enquiry for constitutional problems (the Tremblay Commission) to study the distribution of taxes among the federal government, the Provinces and the Municipalities, and the School Boards; and the "encroachments" of the Federal Government into the field of direct taxation. It proposed that social programs be under Provincial jurisdiction and that major fiscal reforms, very different from those of the Royal Commission on Dominion-Provincial Relations, be adopted. Little came of the specific recommendations of either of these commissions.

The Meech Lake Accord, no doubt couched in generalities to accommodate the interests of the ten provinces and the federal government, has again raised the spectre of conflict over federal spending power on the one hand and provincial rights on the other. Perhaps the most controversial issue raised by the Accord, from the point of view of Canadian local government, related to the seventh clause of the Agreement which proposes to add section 106A to the *Constitution Act, 1867*. The official summary states:

> The purpose of this provision is not to defy or extend the spending power of parliament, but rather to require that the Government of Canada provide reasonable compensation to the government of a province that chooses not to participate in new national shared-cost programs in areas of exclusive provincial jurisdiction, but only if the province carries on a program or initiative compatible with the National objectives.

As early as May 1987, Andrew Cohen, writing in the Financial Post notes: ". . . differences over the meaning of a Key-clause threatened to delay—if not destroy—the historic Constitutional Agreement."[18] He goes on to say "Constitutional experts are divided. Interest groups—nurses, native people, day-care supporters—have opposed it. Some English Canadians say it goes too far and gives Quebec and the other

Provinces too much at the expense of the Central government . . . "[19] The reaction of some anglophone Canadians may have given Quebec Premier Henri Bourassa some second thoughts about the clause on federal spending power. As Cohen goes on to note, some constitutional experts in Quebec, such as Andree Lajoie, think the clause would put an "irrevocable dent" in Quebec's autonomy. Former Quebec Finance Minister Jacques Parizeau, says "it invites centralization." Cohen adds, "Predictably, Quebec Inter-governmental Affairs Minister Gil Remillard now wants wording which would explicitly safeguard Quebec's right to opt out of a shared-cost program even if the province's program was not precisely the same. He argues that Quebec does not want to be bound by strict "criteria", "norms", or "standards", to qualify for Federal money. Rather he wants national objectives to be more general." Cohen then goes on to point out that Senator Eugene Forsey, a constitutional expert, has his own doubts about the clause. He thinks "compatible with national standards" must be defined. He wonders if it refers to standards set by parliament or another body. Forsey asks:

> Would Parliament be compelled to provide money for provincial plans that did not meet national standards it set, but which the Courts decided were "compatible with national standards"?[20]

Many people agree that if anything kills the Accord it will be this clause. Ramsey Cook, York University historian, is quoted by Cohen as saying "While it will be put into legal language, they're not going to say anything beyond that to define what it means. They'll leave that to the Courts."[21] Finally, Cohen identifies what to those serious students of government may be the greatest concern:

> Critics fear the agreement will make it harder for the federal government to respond to international economic challenges; that it will reduce Ottawa to the role of tax collector; that it will entrench politics in the Senate and the Supreme Court; and that it will lead to a checker board Canada with a different program in different Provinces.[22]

What then is the impact of the 1987 Constitutional Accord on Canadian Settlements? Unlike the American experience (until the recent restraints imposed by the Reagan administration), Canadian municipalities have not relied heavily on federal grants. Leaving grants in lieu of real property taxes apart, the most impressive amount of federal tax monies to reach local government have been those made available to satisfy the objectives of the Canada Mortgage and Housing Corporation. The constitutional justification of CMHC activities and related federal government initiatives is somewhat tenuous. The stated concern of the federal authorities is to protect its mortgage interest in housing stock.

Generally, municipal governments in Canada are restricted by their various enabling acts (Municipal Act, City Charter, etc.) to operating, year by year, within their fiscal means. Unlike their parent provincial governments and the federal government, they are not able to run significant deficits. Because of the increasing demands placed on services delivered by local government, municipalities traditionally sought increased amounts of money from the provincial governments and, to a lesser extent, indirectly from the federal purse.

REACTION OF LOCAL GOVERNMENT TO THE MEECH LAKE ACCORD

Federation of Canadian Municipalities

This Ottawa based organization represents some 269 municipalities and 17 municipal organizations across the country. It monitors the actions of the federal government in order to be in a position to make representations to the appropriate minister whenever measures viewed as contrary to the interests of local government are perceived.

As of the date of the presentation of this paper, the F.C.M. was maintaining only its traditional monitoring function in so far as the Meech Lake Accord is concerned. The board of the organization has not made any formal representations to government on the matter. It is understood that members have not conveyed to the F.C.M. any misgivings which they may have about the Meech Lake Accord. Of more concern to the Federation at the moment are federal government proposals for tax reform which may place a heavy and unexpected additional burden on local rate payers.

Union of British Columbia Municipalities

This provincial level organization is an example of a very active federation concerned with the well-being of local government. It represents about 143 municipalities and 27 regional districts in British Columbia. At this time the U.B.C.M. has not adopted a position, either in favour of nor in opposition to, the Meech Lake Accord. It is believed that most local government councils and boards do not expect Meech Lake to have a fundamental effect on municipalities.

Although most representations made by the U.B.C.M. are addressed to the various ministries of the provincial government, national constitutional questions have been addressed by this organization. Noteworthy was its Brief presented to the Task Force on Canadian Unity in February, 1978. Among other things, the Brief urged that the new constitution should implement the fundamental principle of "recognition of the status of local government and the readjustment of the functions and responsibilities of all three levels of government." Subsequently, at its annual convention in 1983, the following resolution was endorsed by the Union of British Columbia Municipalities:

> *A26 LAW-MAKING, FINANCIAL AND INSTITUTIONAL AUTONOMY FOR BRITISH COLUMBIA MUNICIPALITIES*
>
> WHEREAS under the "new" Constitution Act of 1981, we are still provided for under Section 92 as "municipal institutions" in relation to which provincial legislatures "may exclusively make laws"
>
> AND WHEREAS it has long been recognized that municipalities need an enhanced legislative clout in order to deal effectively with a growing number of social and economic problems and responsibilities;
>
> AND WHEREAS a major study by the Federation of Canadian Municipalities has endorsed the principle of the following three autonomies for municipal government:
>
> (a) law-making autonomy—a defined area of legislative competence to be reserved for municipal government, and to be beyond the recall by any other level of government except by some extraordinary process.
>
> (b) financial autonomy—an area of financial and general fiscal authority to be reserved for municipal government including direct taxing power and the right of participation in inter-governmental tax-sharing agree-

ment and tax-allocation arrangements in one's own right.

(c) insitutional autonomy—the right to adopt, and also to amend by appropriate procedures, one's own charter, without the need for recourse to any other level of government;

AND WHEREAS it appears that the time has passed whereby these objectives can be achieved by outright entrenchment in the Canadian federal constitution, the next direct opportunity provided being ten years from now;

AND WHEREAS under Section 32 of the new Cosntitution Act (the notwithstanding clause), it is possible for the provinces to "opt out" of, say, Section 92, and entrench municipalities with certain autonomous rights within the particular province involved:

THEREFORE BE IT RESOLVED that the Union of British Columbia Municipalities make vigorous representations to the Provincial Cabinet at the earliest possible moment to take specific steps to implement the above three autonomies;

AND BE IT FURTHER RESOLVED that the incoming Executive of the U.B.C.M. prepare a draft policy white paper on the subject and with the cooperation of its member municipalities, conduct a series of province-wide hearings to enlist citizen support."

SUMMARY AND CONCLUSIONS

Canadian municipalities, although governed by locally elected councils, are clearly the creatures of the provinces. Civic powers are strictly limited to those which have been delegated to local government by the various provincial legislatures.

The objective of the Fathers of Confederation was to apply a parliamentary system of government to a new land. Unlike that of Great Britain (a unitary State), the Canadian Constitution would have to accommodate a confederation of provinces which were to possess significant self-governing powers. *The Constitution Act, 1867* was largely a vehicle to apply parliamentary process, with its ancient traditions, unwritten common law and persuasive conventions, to the realities of a new federation.

The draftsmen had no need to be comprehensive, nor did they perceive any need to create a charter of rights in light of what Professor

Hogg describes as the "moderation of their legislative bodies and the rules of the common law." As a result, "the earnest literal-minded student", envisioned by Dawson, is shocked at what he reads in the *Constitution Act of 1867*. Municipalities on the other hand, have enjoyed a long familiarity with the Canadian parliamentary system. As a result, local councillors may not have taken Meech Lake as seriously as some literal-minded critics.

Over the decades, any intention which the founding fathers may have had of establishing a strong central government was frustrated by the decisions of what, until 1949, was our highest court of appellate jurisdiction: The Judicial Committee of the Privy Council in London. Senator Forsey characterized some of the Law Lords as "the wicked stepfathers of Confederation." In addition, the growth of importance of responsibilities assigned to the provinces mitigated against centralism.

Such concern as has been voiced by municipalities about the adequacy of the Canadian Constitution has been directed (a) against the inadequacy of provincial/municipal taxing ability to fund the growing demand for provincial/municipal services; and (b) in favour of some degree of local autonomy in the formal constitutional sense.

The generality of the wording of the Meech Lake Accord may have insulated it from serious criticism by the representatives of local government. Or perhaps, the historic reliance of municipalities on the provincial legislatures, rather than on the federal parliament, as the source of delegated power my account for a lack of civic consternation about the compact. In any event, as at the date of this paper, little opposition to the Meech Lake Accord has been voiced by municipal councils on the grounds of its possible adverse impact on Canada's settlements or its municipal structure.

NOTES

1. (1920) 47 Ontario Law Reports, p.275 at p.280.
2. Ian MacF. Rogers, *The Law of Canadian Municipal Corporations*, (2nd edition). Toronto: The Carswell Company Limited, 1986, p.1.
3. Ibid, p.1.
4. Ibid, p.2.
5. Ibid, p.3.
6. (1915) 33 Ontario Law Reports, p. 267 at p. 275.

7. R. MacG. Dawson, *The Government of Canada*, (4th edition). Toronto: University of Toronto Press, 1963, p.61.
8. Walter S. Tarnopolski and G.A. Beaudoin, *The Canadian Charter of Rights and Freedoms*. Toronto: The Carswell Company Limited, 1982, Preface.
9. Peter Hogg, *Constitutional Law of Canada*. Toronto: The Carswell Company Limited, 1985, p.4.
10. Dawson, p.61.
11. Ibid, p.62.
12. Hogg, p.81.
13. Dawson, p.80.
14. Hogg, p.88.
15. Norman J. Ruff, "Provincial Government", *The Canadian Encyclopedia*. Edmonton: Hurtig Publishers, 1985, p. 1500.
16. David Ricardo Williams, *Mayor Gerry—The Remarkable Gerald Gratton McGeer*. Vancouver: Douglas and MacIntyre, 1986.
17. Richard Simeon, *The Canadian Encyclopedia*. Edmonton: Hurtig Publishers, 1985, A-For, p.505.
18. Andrew Cohen, *The Financial Post*, May 25, 1987, page 2.
19. Ibid.
20. Ibid.
21. Ibid.
22. Ibid.

PART II

THE ACCORD: PROCESS AND PRODUCT

FEDERALISM AND THE PROVINCES

Alan C.Cairns

The specific nature of the Meech Lake process compounds the difficulties which always attend commentary on such a moving target as the Canadian constitution. The honourable and socially necessary role of constitutional critic requires the co-operation of governments for its effective performance. The minimum requirement for such co-operation is a reasoned exposition by the governments which dominate the process, of the ends they have in view, and the relations of the chosen means to their attainment.

Elucidation of ends is not enough

The elucidation of ends requires more than homilies about reuniting the Canadian family, healing wounds left over by the Constitution Act of 1982, and producing a more harmonious federation. Desirable as these objectives are, their citation does not allow the outside commentator to engage in effective dialogue with those who, as our elected servants, have the major responsibility for keeping up-to-date a constitution which belongs to all Canadians.

In what way have the eleven governments violated their trust; or more precisely, ten of the eleven governments? The government of Quebec must be exempted from the bulk of my strictures. Both the Parti Québécois and the Quebec Liberal Party developed constitutional proposals, the meeting of which would produce the willing adhesion of the government of Quebec to the constitution. The election of the Quebec Liberal Party in December 1985 was followed by the speech of M. Gil Remillard, Minister for Canadian Intergovernmental Affairs to a conference in Mount Gabriel in May 1986, at which time he laid down the five requirements of the Quebec government. In ways that for the moment are irrelevant for our purposes, these proposals, modified by the process they have gone through and now clothed in legal language, have found their way into the constitution, or will do so if the Meech Lake amendments are passed by the legislatures of all eleven governments.

So, from a Quebec perspective the Meech Lake process has been open, the objectives of the government and the constitutional instruments to achieve them were laid out in advance, and the proposed Meech Lake amendments can be assessed as adequate or inadequate in the light of known means and ends. In such circumstances, the constitutional constituency of journalists, scholars, intellectuals, and engaged citizens in Quebec can have an intelligent debate on Meech Lake.

Such a possibility does not exist outside of Quebec. This exercise in constitutional change, the second most significant package of constitutional amendments in one-hundred-and-twenty years of our Canadian existence, is unaccompanied by serious position papers from Ottawa, or from any of the other nine provincial governments. I speak with clinical accuracy when I state that the federal government has not gone beyond rhetoric and platitudes in explaining the consequences for all Canadians of the Meech Lake proposals.

It cannot be argued that since the proposed changes are ostensibly addressed to Quebec that no further explanation is required, that Canadian citizens from Bonavista to Vancouver Island can piggy-back an understanding relevant to the *Canadian condition* of proposals drafted by the Quebec government, which quite properly address Quebec concerns. It is not the responsibility of Mr. Bourassa to speak for or to Canada. The major responsibility for that concern can only reside with the federal government. What Meech Lake will do to and for the government of all Canadians, its effect on the Charter, the kind of federal system envisaged by Meech Lake, the effect on such institutions as the Senate and the Supreme Court, and the effect of the immigration provisions on a policy area which virtually defines the central task of the modern democratic state—the ethnic and social composition of its future citizenry—surely these are constitutional concerns which require a careful analysis and response from the federal government. No such response is available.

Significant change—an example

To take one example only: under the guise of a transitional measure Canadians are embarking on probably the most significant explicit change in parliamentary government since Confederation, the change in the nomination and appointment procedures for Senators which will eventually produce a Senate whose membership is entirely derived from lists—which may have only one name on them—prepared by provincial governments. To what kind of Senate are these changes directed? The Senate is not only a regional chamber, but also a house of review—of sober second thought—for legislation which often has no regional incidence. It is little short of incredible that the federal government has not publicly addressed the issue of the responsibilities of this reconstituted second chamber.

New roles for the Provinces

The shortcomings of the Meech Lake process also apply to the behaviour of many, possibly all of the provincial governments outside of Quebec. Meech Lake unquestionably shifts the balance of power in the federal system towards the provinces. The government of British Columbia will have:

(a) a new role in appointments to the Senate and the Supreme Court;
(b) an enhanced role in the amending formula;
(c) potentially enlarged responsibilities in immigration;
(d) new tasks via annual conferences on the constitution and on the economy in running the federation as a partnership;
(e) constitutionally protected capacities to opt out of future national spending programs with full compensation in specified circumstances;
(f) greater responsibilities with respect to any future decision to transform the northern territories into provinces.

Further, the government of British Columbia, along with the other governments of the federal system, now governs a people who have been redefined by Meech Lake in terms of linguistic dualism.

The cumulative effect of these changes, which are not hypothetical or mere proposals but concrete changes well on the way to implementation, at least parallels in significance the constitutional package put forth by former (provincial) Premier Bill Bennett in 1978. That package was preceded by numerous public speeches by the Premier and was presented in nine constitutional booklets amounting to over 100 pages of reasoned analysis. There is nothing comparable from the government of his successor. To be specific, there is nothing at all.

How does the government of British Columbia view its new status in the federal system? Are the changes proposed consonant with those laid out by its predecessor? What has become of the drive of the previous government to achieve recognition as a fifth region? At the time of writing (January 1988) we have no answers to these questions.

Thus, both as a resident of British Columbia and as a citizen of Canada, I have been deprived of the information necessary to make an informed judgment on Meech Lake. I have heard it suggested that explanations or position papers would be superfluous because, after all, our history of recent decades is littered with constitutional discussions and proposals of which this is simply a culmination. That is, if I wish to find the explanation for the Senate reform proposals, or the distinct society clause, I should rummage in my files for the proposals of other governments, task forces, and suchlike. But this is preposterous; the welter of proposals from the past does not speak with a clear voice and, in any event, many of the particulars of Meech Lake changes have idiosyncratic features not seen before. The citizen and constitutional commentator needs to know why this particular government is in favour of these particular changes, and what their likely effects will be on a constitutional system that is the heritage of all Canadians, and of which our governments are only temporary custodians or trustees.

Constitutional morality

It is easy to misunderstand my criticisms. It is not just an offended sense of *amour propre* which lies behind them, although I strongly feel that all citizens outside of Quebec should be offended by the manner of Meech Lake. Rather, my concern is with the larger issue of constitutional morality and with the damage done to the interdependent community of constitutional actors and constitutional commentators who together should play key roles in the evolution of the constitution. Thus, in the same way as judicial decisions are often described as the product of court and company—which includes the attorneys in court, the law professoriate, and so forth—I view the desirable manner of constitutional evolution as being the product of political decision-makers and the accompanying community of analysts and commentators. The capacity of the latter to contribute depends on the willingness of the former to provide relevant information about intentions, means, and goals. The functionally useful professional examination of judicial decisions could not survive a situation in which judges did not give reasons for their decisions.

Since the government has not been forthcoming, those who do not sit in the seats of power but nevertheless have a legitimate role in the development of a constitution, are incapable of effective performance. It is my considered opinion that this shortcoming of the Meech Lake process reduces the quality of the constitutional product which will emerge.

One reply to these criticisms would be that the bringing of Quebec back into the constitution was an act of such high statecraft, one so fraught with danger and likely to produce such perilous consequences should it founder, that extraordinary stratagems were required to pull it off successfully. If that were publicly claimed to be the case several benefits would follow:

(1) We could have an open debate as to whether such an assessment of the situation was reasonable. Could the constitutional package have been crafted slightly differently and still have accommodated Quebec? Was there no alternative to extending the response to Quebec to the other provinces?

(2) The procedures, with their secrecy, absence of position papers, and stated intent to make changes to the constitutional package only if egregious errors were found—as defined and agreed to by all eleven first ministers—could be isolated as an abnormal response to an abnormal situation. They thus would be removed from the stream of precedents which will otherwise control future constitutional decision-makers.

This, however, is not the way that Meech Lake has been defined. Indeed, the impression conveyed is that Meech Lake is the appropriate way to generate constitutional change. For example, the aboriginals have been advised that, if they really wish to have their rights constitutionally defined, the Meech Lake process is the proper route to follow.

Accordingly, I view the Meech Lake process as a failure in constitutional morality. In a constitutional democracy, governments involved in major constitutional changes should either provide reasoned explanations for the particulars of the changes they propose, or reasoned explanations that significant reasons of state require departures from otherwise appropriate behaviour. To do neither of these conflicts with a developing constitutional tradition, based on the Charter and a rights-bearing citizenry, which suggests at a minimum that the constitution does not belong to governments alone. The Charter, with its diverse recognitions of gender, ethnicity, aboriginal peoples, the disabled, and so on, has created constitutional niches for numerous social categories. The spokespersons for these groups are offended by constitutional changes which do—or may—affect their rights and status, but which they can not influence. In the words of the government's paper *Strengthening the Canadian Federation* the task of public participation is to "explore the implications of the Constitutional amendment, 1987 so it is well understood by everyone," and to help set the agenda for future constitutional conferences. This is not a particularly robust role.

A laudable goal and its results

The entirely laudable goal of Meech Lake was to bring Quebec back into the Canadian constitutional family after the unwillingness of the Quebec government of Levesque to accept the *Constitution Act 1982*. The latter was considered an inadequate response to Quebec's demands and to the implied promises of the federal government in the Quebec referendum. While former Prime Minister Trudeau is correct that the Constitution Act applied to Quebec, whether or not its government voluntarily assented to it, it is also true that the psychological sense of exclusion, of having been cheated, was a festering by-product of 1982 which, if unattended, could have become a significant political resource for a future independence-oriented government of Quebec. Further, the Parti Quebecois government had signalled its constitutional alienation and defiance by systematically employing the "notwithstanding" clause (s.33) of the Charter wherever possible, and by limiting its participation in the intergovernmental arena, including constitutional conferences.

To put it differently, the government of Quebec employed its disagreement with the *1982 Constitution Act* as a resource to embarrass the other government partners in the federal system, to hamper the effective functioning of federalism, and to indicate clearly that the national unity/integration purposes of the *1982 Constitution Act*, especially the Charter, would be ill-served by the continuing official estrangement of the Quebec government.

The election of new governments in Quebec City and Ottawa produced a constitutional opening which both governments skilfully exploited. Quebec's official demands were almost universally viewed as modest when contrasted with the positions of previous Quebec governments. The other provincial governments were subsequently congratulated for altruistically shelving their own constitutional demands to some future round of constitutional discussions.

Hence, this was to be the Quebec round, the occasion for the return of Quebec to the constitutional family. However, the process of constitutional amendment required the agreement of the other provinces, either seven or ten (including Quebec), or unanimity depending on the subject matter. Further, although not all the amendments individually required unanimity, the federal government decided to treat the whole package as subject to a unanimity requirement. Thus, each government had a veto.

The possession of ten provincial vetos meant that the self-sacrifice of the nine provincial governments outside of Quebec in shelving their constitutional demands did not go unrewarded. The payment for not exercising the veto was that the response to the constitutional package demanded by Quebec was, with the exception of the distinct society clause, generalized to all the provinces.

This outcome was rationalized in terms of the princicple of the equality of the provinces. While this principle has an extensive history as part of the constitutional desire not to accord special status to Quebec, it was also an inescapable byproduct of the equality of provincial power in the possession of a veto. Accordingly, it is surely misleading to characterize the Meech Lake-Langevin process and outcome as the Quebec round. It is more appropriately described as a provincial round, whose substance was primarily determined by Quebec. There are of course some exceptions. The place of "roles and responsibilsities in relation to fisheries" as a permanent agenda item for the future annual constitutional conferences was a side payoff to Premier Peckford of Newfoundland. The placating of Peckford has traumatized fisheries processors and fishermen's unions in the other Atlantic provinces who are subjected to the unending constitutional uncertainty as to which government will have future jurisdiction over their affairs.

A one-way street

The fact that the Quebec round became the provincial round presupposes, of course, that unlike the *1982 Constitution Act* in which both orders of government enhanced their constitutional status in different ways, the 1987 Accord is much more of a one-way street. The one possible exception to this is the constitutionalised recognition of the federal spending power in areas of provincial jurisdiction. This has been seen by some as a gain for the federal government, in the sense that its former exercise of the spending power in provincial arenas was viewed as constitutionally ambiguous. However, the repeated justification which the federal government employed for its spending power amendment was to ''civilize the spending power'' which unquestionably suggests imposing new constraints on its future use. Further, most of the social policy presentations to the Joint Committee, including that of Al Johnson, a former Deputy Minister in both Saskatchewan and Ottawa, assumed that the spending power would be a less available instrument in the future than it had been in the past. Its former use was, of course, central to the creation of the Canadian welfare state.

Another critique of the thesis that the Meech Lake Accord is characterized by provincial government gains and federal government losses is to deny the relevance of such zero-sum analysis, and to suggest instead that federalism is about interdependence, co-operation and sharing, and that Meech Lake should be viewed as contributing to a more fruitful management of an intergovernmental entanglement that none can escape. The raw material for this thesis is found in the correct perception that Meech Lake increases the number of arenas in which governments are thrown together—annual conferences on the constitution and on the economy, the nomination and appointment processes for the Supreme Court and the Senate, the accentuated juxtaposition of the two orders of government in the immigration field, the intergovernmental bargaining which the new spending power provisions will produce, and even in the enlargement of the scope of the unanimity requirements of the modified amending formula.

While these changes can all be seen through the lens of an increasing recognition of an inescapable interdependence, it is somewhat odd not to note that within this new interdependence the muscle of the provincial governments is much increased and that of the federal government is much reduced. To fail to make this distinction is to presuppose that all systems of intergovernmental interdependence and of constitutional requirements for co-operation are equal in the eyes of the gods who watch over federalism, which is surely an untenable position.

The detachment of the Conservative government from the standard political/bureaucratic desire to protect and expand turf is to be found in some combination of the following factors:

(1) A partisan desire to strengthen the election prospects of the party in Quebec is clearly central. Precisely the same partisan motivation has induced the federal New Democratic Party to support an Accord which is opposed by most of its natural constituents.

(2) The perceived urgency of bringing Quebec on board surely suggested that the precarious venture of getting the agreement of the other ten governments would be jeopardized if they, including Quebec, were asked to cede power of whatever kind to the federal government. Thus the federal government role as a combined umpire/facilitator doubtless flowed in part from certain realities of power it could not ignore.

(3) New governments often desire to differentiate themselves from their predecessors in key policy areas, especially those possessed of high symbolism. Quebec/Ottawa relations specifically, and federal-provincial relations more generally, were obvious candidates given the centrality of constitutional matters to the Trudeau government, and the confrontational style it brought to their resolution.

More generally, the adversarial relation between the opposition Conservatives and the governing Liberals in the Trudeau years had induced the former to define themselves antithetically to the centralist nationalism of Trudeau. Hence the Kingston communique, signed in 1977 between Conservative leader Joe Clark and four Conservative provincial premiers, which supported various provincial demands, Clark's subsequent definition of Canada as a community of communities, and the later Conservative defence of the "Gang of Eight" dissenting provinces in the stormy parliamentary battles of 1980-1981, which led to the *1982 Constitution Act*. The posture of the Conservative government was clearly a continuation of the constitutional philosophy the party had espoused in the decade before the 1984 Mulroney victory.

(4) In any event, there is little recent evidence of a well-developed Conservative position supportive of a strong central government, little evidence that the Mulroney government was keeping a well-developed preference for a strong Ottawa under wraps for the sake of a higher cause. Some time ago John Meisel argued that governing parties too long in office come to forget and ignore the federal nature of the society they govern. It may equally be true that new governing parties which have enjoyed long spells on the opposition benches may see the world through provincial lens, and relatively forget and ignore the overall coast-to-coast Canadian community which, incidentally, the Charter has invigorated.

Charter implications

No one who observed the parade of angry Canadians who appeared before the Joint Committee can doubt that the Charter is transforming the psyche of the Canadian people, that it has given women, aboriginals, ethnic communities and others, niches in the constitution they formerly did not have. That on the whole these groups, or at least their leaders, see themselves in Canadian not provincial terms is eloquently confirmed by their testimony. These new cleavages, which are constitutionlly entrenched, clash with the federal-provincial cleavage which goes back to Confederation, which is the superior cleavage for the governing elites of the federal system, and to which Meech Lake was a response.

To make sense of Meech Lake it is necessary to keep in mind the extent to which it was a response to Quebec filtered through a process in which governments were the dominant actors, and within which the other nine provincial governments could gain increased power and status on the coat-tails of Quebec. Meech Lake has enhanced the significance of the provincial dimension for all Canadians.

IDEOLOGY AND SOCIAL CHANGE: MEECH LAKE AND NATIONAL IDENTITY

Gladys L. Symons

This paper presents an analysis of the Meech Lake Accord, taking into consideration national ideologies and changing national identities in Canada. Two aspects of the accord are discussed, namely, the distinct society clause and the immigration issue. In keeping with the theme of the seminar, the focus in the latter part of the paper is on the social space of Montreal, Quebec's major urban centre.

QUEBEC AND THE CONSTITUTIONAL AMENDMENT

I should begin by explaining that the impact of the Meech Lake Accord on human settlements has not figured prominently in the response from Quebec. The attention of Québécois scholars, politicians, journalists and other observers of the social scene has been captured by a different focus on the constitutional amendment.

The main concern of the entente, from a Québécois point of view, is the question of the distinct society. All the other articles flow from this central point, and must be interpreted in the light of this issue. Revision of spending power, nomination of Supreme Court judges, the amending formula, Senate reform and control of immigration are all seen as tools for Quebec to protect her distinct society.

Hence, in order to understand a Quebec response to issues like the one before us today, it is important to reflect on the designation of Quebec as a distinct society. In a nutshell, "la question nationale" provides the backdrop for any discussion of matters constitutional.

NATIONAL IDENTITIES IN CANADA

One of the fascinating characteristics of Canada is the difference in the *kind of social space* and the *magnitude of social distance* that separates her two major linguistic communities. As one moves between Quebec and Anglo-Canada, striking differences are evident. We can readily identify distinctive definitions of the nation and national identity, and very different perspectives on the Canadian social reality. The tenor of the debates concerning the Meech Lake Accord in Quebec and English Canada provides a case in point. In short, Québécois and Anglo-Canadians[1] live in different ideological worlds, and they have different visions of Canada.

Bilingualism, Multiculturalism, and Dominant Conformity

Canada, as seen through Anglophone eyes, is a nation represented by groups of citizens bound together by their differences, not their similarities. This definition is drawn from the world of pan-Canadian nationalism, describing the coming together of a heterogeneous collection of peoples of different national origins and ethnicities, different religions and cultural heritages, and people who speak different languages.

Cultural pluralism in a bilingual state is the official ideological description of the Canadian nation. This is the model *for*, not the model *of* the Canadian reality.[2] At the commmonsense level of daily life experience, the model most closely approximating the Canadian reality is *not* one of cultural pluralism. Linguistic symbols such as "bilingualism" and "multiculturalism" serve to mask the reality of anglo-conformity (with institutional support for folkloric cultures) which more correctly describes social life in English Canada.

For the average Canadian, the nation is comprised of a dominant Anglophone majority, and many ethnic minorities, of which French-Canadians form one. At best, most Canadians can conceive of, or "understand" Quebec as a region (the notion of regionalism makes sense to Canadians) with regional problems like any other, but they have difficulty comprehending the sense of Quebec as a distinct society. It may well be acknowledged that Quebec is "different", but recognizing this specificity in terms of a *society* is a very significant step. In this respect, the addition of the "distinct society" clause in the Constitution represents a major case of social change indeed![3]

Moreover, when Anglo-Canadians refer to the state, it is clearly the federal government. Provincial governments are often seen as necessary evils to be held in check by a strong federal state. (Anglo-Quebeckers, incidentally, share this view with their counterparts in the rest of Canada). This definition of the situation helps explain the negative reaction of many Anglophones with respect to the transfer of power from the federal government to the provinces.

For Canadians, the problem of a national identity is enigmatic. As the Québécois push to assert their collective self-definition, they compel Anglo-Canadians to do the same. While English Canadians have little trouble defining themselves as "subject"[4], that is, as the dominant group in the Canadian federation, the actual definition of what constitutes a "Canadian identity" is more difficult to construct. Moreover, drawing upon the knowledge system of pan-Canadian nationalism renders Herculean the task of producing a meaningful definition of the Canadian collective identity. Pan-Canadian nationalism calls upon *difference* (such as, cultural, linguistic, religious, ethnic, and so forth) to symbolize *similarity* (that is, Canadian). This produces a contradiction rather difficult to apprehend.

Quebec's Distinct Society and the National Question

Over the last quarter of a century, nationalist ideologies have provided the Québécois with a shared definition of their community: Quebec forms a distinct society. This society is characterized by a territory (the province of Quebec), a language (French), a distinctive culture and concomitant institutions (the civil code, for example) and shared life experiences. But most important of all, members of this society are aware that they possess a common history and *share a common destiny*.[5] This is the Québécois social space, and all these elements are part and parcel of the social stock of knowledge which the Québécois use to make sense of their reality and to define their collective identity.

The national question in Quebec is simply this: How to preserve and develop this distinct Francophone culture and society in the rapidly changing world of English North America? The question is not new, but it has become more pressing.

Responses have varied over time, but since the Quiet Revolution, the state—the Quebec state, that is—has been assigned a major role in the drama. Hence, the provincial government in Quebec means something different for her citizens than does this level of government in other provinces in Canada. The Quebec state is not only the *protector*, but also the *symbol* of the Francophone nation. The provincial government in Quebec has a major role to play in the definition and preservation of the Québécois identity in North America.

A new sense of collective identity emerged in the 1960s to indicate this shift of consciousness. French-Canadians in the province became "Québécois." Quebec forms a distinct society, and the consciousness of her people is dominated by a set of definitions different from those of their Anglophone neighbours, be they English Canadian or American. Quebec is undoubtedly a province "pas comme les autres."

However, it should be noted that the Québécois can harbour a fair amount of ambivalence concerning their relationship with Canada. This ambivalence is expressed, for example, in voting habits. That a people would vote for the centralizing party of Pierre Trudeau in Ottawa, while electing an *independantiste* Parti Québécois in Quebec, vote "no" to the referendum in 1980 and "yes" to the Parti Québécois in 1981 can only be understood in the context of this fundamental ambiguity inherent in the Québécois consciousness.[6]

The reality of everyday life in Quebec is complicated, for there are other communities—linguistic and cultural—that do not share the vision of the Québécois majority. The clashes between these separate ideological worlds have produced some highly significant events in Quebec's recent history. Integrating her ethnic minorities into the Québécois majority culture is surely Quebec's most crucial challenge.

These aspects of Quebec society make the national question yet more pressing, and it follows logically that this concern must precede all others. Issues of shifting power from centre to periphery, for example, are defined and interpreted in Quebec in the light of the national question. This preoccupation quite literally permeates Quebec's definition of the world.

"MADE IN CANADA" THE LANGUAGE DEBATE

As far as the Québécois are concerned, a society is not distinct without her proper language—which brings us to the seemingly endless linguistic debate. This tenacious feature of Canadian society strikes at the heart of the question of national unity and depicts in vivid colours conflicting definitions of Canadian reality and national identities.

Understanding language is critical for comprehending everyday life in general, and life in Canada most specifically! Language not only makes intersubjectivity possible, but also communicates meanings that are not direct expressions of the subjectively experienced "here and now."

> Language is capable not only of constructing symbols that are highly abstracted from everyday experience, but also of "bringing back" these symbols and apprehending them as objectively real elements in everyday life. In this manner, symbolism and symbolic language become essential constituents of the reality of everyday life and of the commonsense apprehension of this reality. I live in a world of signs *and* symbols every day.[7] [Emphasis in the original]

Language permits, among other incredible feats, the production of a common knowledge of the past—a collective history. A shared symbolic world of language equips the community with a powerful tool to define its lifeworld. Additionally, language is used to create and maintain group solidarity. As one perceptive social observer notes: "The whole history of a linguistic group is mirrored in its way of saying things."[8] It is little wonder that language takes on such significance in the Qu´eb´ecois/Canadian context.

Language as a Symbol of Culture, Society and Nation

We cannot realistically divorce language from the lifeworld of the speaker. Language is an integral part of the culture of a group, and the very means by which a society creates and expresses its distinctiveness.

> To speak French rather than any other equally prestigious idiom in the world is not simply one aspect of a personal and collective identity among many. Thanks to language, we recognize that we belong to the same world, we experience feelings that ring true with those of other people. It is through language that dialogue and conflicts take form.

> Language, therefore, is a concrete milieu. It is not simply an instrument of expression.[9] [Author's translation]

For the Québécois, language is not only a symbol of the culture, it is also a symbol of the society and the nation. Embodied in the definition of traditional Quebec society were the elements of a distinctive French language and culture, the Catholic religion and the rural way of life. In an urbanized and secular Quebec, these last two symbols have lost their significance for a definition of the nation. Hence, the French language is imbued with even more symbolic power than it possessed in the past. Moreover, the ever widening impact of the communications revolution and the invasion of the electronic media in Quebec threaten the French language in a way unknown in former times. It therefore becomes imperative that language be given special attention in Quebec.

Furthermore, at the level of everyday life and consciousness, the conceptual links between language and culture codified in Bill 101 are socially grounded. Bill 101 is part of the social stock of knowledge of the Québécois community. The quick and explicit response to Bourassa's suggestion of "eliminating the irritants" of the language legislation attests to the fact that living and working in French make sense to the Québécois.

Language as a Means of Communication

The view from the Anglophone side of the fence, as one would expect, is different. In order to render intelligible the definition of Canada as a bilingual and multicultural nation, language must be made culturally neutral—just the twist of hand that Trudeau so adeptly performed in 1971. In the federal view, language is defined as a "culturally neutral, or utilitarian means of communication" by which individuals from different cultures may participate in the same political community. Separating these two functions of language (symbolic and utilitarian) allowed the federal state to legislate official languages without legislating official cultures.[10]

The notion of language as culturally neutral strips it of its power as a cultural and national symbol. As far as Canadians are concerned, English is indeed their language, and hence part of their culture. However, since they share this language with the United States (a nation with which they often compare themselves), English cannot serve as a distinctive symbol. Therefore it has much less power to conjure up nationalist sentiment than does French for the Québécois. The idea of language as culturally neutral is a totally untenable position in Quebec. Thus, it is not surprising that Anglo-Canadians have such difficulty understanding the Québécois reality.

One of the very interesting aspects of the Meech Lake Accord was the thwarted attempt to introduce the notion, fuzzy as it was, of territorial bilingualism into the Constitutional amendment. The concepts of a "Francophone Canada" and an "Anglophone Canada" were replaced in the revised version by individuals speaking one or the other language and living in certain areas of Canada. From Quebec's point of view, this distinction loses much of its meaning if the notion of a cultural community is not specified. Language is not simply a means of categorizing individuals; it circumscribes a whole culture and represents an entire people.[11]

Symbols, Power and the Definition of the Situation

Language represents a very important power base in human societies. Through communication and interaction, human beings socially construct the community in which they live. We operate in a symbolic as well as a material environment, and it is because of our capacity to use and manipulate symbols that we can interact and hence construct, maintain and/or change the social world around us.

All too often we are tempted to dismiss this reality as "merely symbolic." However, people act on the basis of the meanings they give to objects and events, not on the basis of any intrinsic significance to which these objects and events lay claim. Hence, the definition of the situation becomes crucial for action. And the situation is defined symbolically, through the use of symbols. Thus, the notion of "merely symbolic" is a contradiction in terms.

This is a very important point, for the ability of certain individuals or groups to define the situation and impose their definition on others is the very essence of power. Situations believed to be real are real in their consequences, and hence, controlling the defining process is critical for establishing and maintaining power.

> The maintenance and activation of power come from being able to convince others of the correctness of your positions, of being able to appeal to those symbols which strike a resonance, of presenting one's self in the appropriate and desired style. . .
> Power, the control of others, is accomplished by getting others to accept your view and perspective. This is achieved by controlling, influencing, and sustaining *your* definition of the situation since, if you can get others to share your reality, you can get them to act in the manner you prescribe.[12]

In terms of the constitutional debate, nowhere is this relationship between power and definition more evident than in the case of the distinct society clause. Discussions over whether or not this notion should be clarified in the Constitution have been long and heated in Quebec. My personal opinion is that, at the very least, references should be made to the French language and culture as features of Quebec's specificity. Some of the dangers of not doing so have been elaborated in a recent article by Jacques-Yvan Morin.[13] He argues that not specifying what "distinct society" means could well pose a serious threat to the French language in Quebec.

Given past events, it is not overly pessimistic to suggest the possibility that the definition of the distinct society may well end up in the courts. If this should occur, Quebec could find herself at serious risk indeed. More important than shifting power from Ottawa to the provinces is the danger of shifting the power of self-definition from Quebec society itself to the judiciary.

NATIONAL IDENTITY, IMMIGRATION AND MULTICULTURALISM

With the rapidly changing ethnic face of both Quebec and Anglo-Canada, new challenges and dilemmas present themselves in terms of defining a national identity. Québécois and Canadian nationalist ideologies have traditionally offered definitions of the nation. However, the rapid social change taking place with the arrival of immigrants in Canada requires some quick answers to ever-growing problems of immigrant absorption. And so it is that the question of control over immigration appears in the Meech Lake Accord. Although Quebec did not leave the bargaining table with more power than she had before, the fact that this control is now enshrined in the Constitution attests to its significance, both today and in the future.

Where do the other ethnic groups fit into the Canadian cultural mosaic? What should be done about the admission and absorption of immigrants? While Canada has tried to answer these questions with her "cultural pluralism" model of ethnic integration, it remains largely an ideology (a model *for* society). In Anglo-Canada the question of linguistic choice for immigrants is irrelevant. English is the language of the public sphere and most of the private one as well. Maintaining one's ethnic and cultural heritage in Anglo-Canada does not extend to the preservation of one's ancestral language, if that tongue is not English. This fact is clear to immigrants when they arrive, and accepted as part of the "Canadian way of life."

Absoption of immigrants in Quebec is not quite so simple. Distinguished by the presence of both linguistic majorities, plagued by a demographic crisis, and threatened by the communications revolution, Quebec has dire need, not simply of immigrants, but of immigrants who can be absorbed into the Francophone society. The future of the distinct society, if French it is to be, depends in large part on the integration of Quebec's ethnic groups into the Francophone community.

True to form, Quebec is in search of a distinctive answer to the immigrant and multicultural issue. The challenge is to have newcomers accept the invitation to share the Québécois ideological world, to identify with the destiny of French-speaking Quebec.

The cultural pluralist model of Anglo-Canada has been rejected. During the Parti Québécois years, a new model was proposed, introducing the notion of the "culture of convergence." Immigrants and other members of "cultural communities" (as ethnic groups are called in Quebec) are invited to maintain their distinctiveness and preserve their specific heritage. At the same time, they are called upon to accept French as the common language of Quebec, as well as accept the "logical conclusion" of this fact, namely that French is the driving force of the Québécois culture.[14] In fact, the bottom line of cultural convergence is dominant-conformity. Cultural pluralism is rejected, since it is believed to lead to fragmentation of the social fabric. Members of a society need a central pole around which to forge a collective identity: and in Quebec, that pole is Francophone.

While Meech Lake is a step in the right direction recognizing as it does Quebec's jurisdiction in immigration matters, constitutional powers alone will not suffice. The amendment is of little use to help Quebec define just how cultural communities will be absorbed and what the changing face of the distinct society will be. Moreover, if the definition of the distinct society is left to the courts, it is not at all clear that Quebec has gained in the bargain.

THE MEECH LAKE ACCORD AND THE URBAN QUESTION

Although the debate in Quebec has not centred on the question, thinking in terms of urban settlements sheds some interesting light on the issue at hand. As a matter of fact, focusing on cities, and specifically on Quebec's largest one, offers quite a new perspective. For nowhere is Quebec's distinct society project more problematic, nor more difficult to implement than in bilingual and multicultural Montreal.

It is no exaggeration to say that in terms of both the distinct society clause and the immigration question, the greatest impact of the Meech Lake Accord in Quebec will be felt in her major metropolis. Questions of bilingualism, multiculturalism and definitions of society crystalise in the very special social space that is the city of Montreal.

With the risk of sounding chauvinistic, Montreal is indeed a unique city in Canada. In fact, it is our only truly bilingual city. Yes, Montrealers really do speak the two official languages. In fact, it has been suggested that distinctive types of French and English are developing in the City. For language specialists, Montreal is a laboratory unparalleled in North America. It is ironic, to say the least, although comprehensible from a Québécois point of view, that the only truly bilingual city in Canada is under pressure to become unilingual.

But why are the definition of the distinct society and the immigration question urban issues? It is to the cities that immigrants go, and in cities that ethnic institutions are created. The emergence of cultural communities with their different degrees of "institutional completeness"[15] are urban phenomena. Immigrant absorption is an urban challenge. In the case of Montreal, for example, almost nine out of ten of Quebec's immigrants make their home in this city. The question of Quebec as a distinct Francophone society, or as a bilingual and multicultural nation most clearly finds meaning in her major metropolis. This is not to suggest that these issues should be relegated to the control of municipal governments. However, the urban dynamic must be acknowledged when seeking solutions to the problems engendered by this social change.

CONCLUSION

The trick to writing constitutions, and amending them, is finding ways to define, in ideal terms, a society which in reality has some blemishes on its face. The Constitution air-brushes the image, if you will, to produce a more attractive picture. Ideological models for a society are enshrined in the Constitution and thus provide the touch-up necessary to produce a beautiful portrait.

We need ideological visions of Canada. We must specify an ideal of what constitutes a beautiful Canada in order to strive to attain it. But beauty, as you know, is in the eye of the beholder. So, whose definition do we choose?

Constitutions provide a model *for* society, that is a blueprint for reality which is based on some set of shared values cherished by the community. Such a model also claims to show how such an ideal society may be attained.[16] But without delineating the peculiarities of the society in question it is difficult to understand either what the model looks like or how it could be created.

We may well question the impact of the Meech Lake Accord on issues concerning the shifting of power and the distribution of goods and services to urban or other centres in Canada. These are important questions that ought to be discussed. But while such queries may seem more or less straightforward, or at least comprehensible in the case of the other nine provinces, Quebec's situation really is different. Regardless of the aspect of the Accord one focusses on, it only makes sense if we fit it into the larger puzzle of "la question nationale."

In this context, Quebec is indeed a province *pas comme les autres*. To ask Quebec to defend a policy (regardless of focus, be it urban or other) strengthening the federal state at the expense of the provincial government is fundamentally to misunderstand the national question, and in the final analysis, to misinterpret the nature of Quebec's distinct society.

NOTES

1. Necessarily simplifying the matter, I shall use the term "Québécois" to refer to Francophones living in the province of Quebec who share a cultural heritage and a destiny rooted in the historical and social space of French-speaking Quebec. "Anglo-Canadian" refers to "English-speaking Canadians concentrated in the rest of the country but also present in Quebec." Notwithstanding the fact that Anglo-Quebeckers' perspectives have changed substantially in recent years (they were once likened to the early Christians—in the world, but not of it), see L. Laczko, "Feelings of threat among English-speaking Quebeckers", in D. Glenday et al (eds). *Modernization and the Canadian States*. Toronto: Macmillan and Company, 1978, pp.280-296; their social space is circumscribed by the Anglophone world of North America, not the province of Quebec.
2. A model *for* a society represents what it would look like in ideal terms, whereas a model *of* the society depicts it as it exists in the here and now, see E. Kallen, *Ethnicity and Human Rights in Canada*. Toronto: Gage, 1982. For an interesting example of a multicultural model *for* Canadian society, see the Federal government's recent multiculturalism bill (Department of the Secretary of State, 1987).
3. We are here assuming that the distinct society clause has meaning for Anglo-Canadians. To the extent that it is not imbued with any social significance, we are, of course, back where we started in terms of the national debate.
4. G.L.Symonds, "Quebec nationalism and Canadian unity: A phenomenological excursion into the Québécois and Canadian realities." Paper presented at the Tenth Anniversary Conference of the British Association for Canadian Studies, Edinburgh, Scotland, April 1985.
5. F. Dumont, "Présentation devant la Commission parlementaire sur les institutions." *Le Devoir*—Le Quebec et le lac Meech. Montreal: Guérin littérature, 1987, p.136.
6. A more simplistic explanation of this phenomenon suggests the ploy of covering one's bases, or not putting all of one's eggs in the same basket. There is, no doubt, some validity to this hypothesis as well.
7. P. Berger, and T. Luckman, *The Social Construction of Reality*. New York: Doubleday, 1967, pp.40,41.
8. A. Schutz, Collected Papers II. *Studies in Social Theory*. The Hague: Martinus Nijhoff, 1971, p.101.
9. Gouvernement du Quebec, *La politique qu'eb'ecoise de la langue française*. Quebec: Editeur officiel du Quebec, 1977, p.17.
10. R. Knopff, "Language and culture in the Canadian debate: The battle

of the White Papers'', *Canadian Review of Studies in Nationalism*. 6 (1) Spring 1979: 66-82.

11. The emphasis on a linguistic community is shared by Francophones outside Quebec as well. For example, the president of the *Société des parents pour les écoles francophones d'Edmonton* was reported as stating that rather than recognizing the ''existence of French-speaking Canadians elsewhere in Canada'', the Meech Lake Accord should recognize the existence of French-speaking communities. ''Alberta francophones face 'slow death'.'' Montreal: The Gazette, September 19, 1987, p.A-10.
12. P. Hall. ''A symbolic interactionist analysis of politics'', in A. Elfrat (ed), *Perspectives in Political Sociology*. New York: Bobbs-Merrill, 1972, p.51.
13. Jacques-Yvan Morin. ''Les conséquences inavouées de l'entente du lac Meech: 2) La langue française affaiblie''. Montreal: *Le Devoir*, January 20, 1988, p.9.
14. Gouvernement du Quebec, *Autant de façcons d'être Québécois*. Plan d'action du gouvernement du Québec à l'intention des communautés culturelles. Québec: Ministère des Communautés culturelles et de l'Immigration, 1981, p.11.
15. Institutional completeness refers to the degree to which ethnic communities create and sustain institutions which satisfy the needs of their members—institutions such as schools, churches, health care services, work organizations and the like, see, R. Breton, ''Institutional completeness of ethnic communities and the personal relations of immigrants.'' *The American Journal of Sociology*, LXX (2) September 1964, 193-205. The Anglophone community in Quebec, for example shows a very high degree of institutional completeness.
16. Kallen, *Ethnicity and Human Rights in Canada*, p.157.

THE ACCORD AND THE URBAN ECONOMY

Anthony D. Scott

AMENDMENT AND MUNICIPAL GOVERNMENT

It is nearly 40 years since I first attempted an economic analysis of fiscal federalism.[1] I tried then to show that when an economy had several governments, each with its own policies, the peoples' migrations to different provinces in search of jobs and preferred public services, would leave them differently distributed geographically than if there was only one government in charge of all public services. And I tried to use economic theory to come to a new conclusion: that the many-province distribution would be superior to what would have resulted from a single government. For example, a federation's GNP would be higher than that of a unitary state.

There was not much economic theorizing about federations and their alternatives in those days, but my piece touched off a gratifying controversy with some better-known economists. Perhaps for that reason, economic analysts tend to have their own special justification of the institutions of a federal form of government. Later, when Albert Breton and I tried to generalize this approach, we included municipal government as a third level, suggesting that there was probably always scope for improvement in peoples' productivities, incomes and well-being by the redivision of the functions of providing public services among *three* levels. Note that under this approach, the number of governments and the division of power is seen as variable. The federation exists, but its precise economic constitution is an object to be scrutinized and perhaps reformed. The beneficiaries of any such amendments to the constitution would be the citizens.

But this approach has never penetrated beyond a few branches of public economics. The terms of the 1982 repatriation and amendment of the BNA Act, and the subsequent Meech Lake accord both reflect a more down-to-earth emphasis: a focus on the relations between *governments*, almost as though the well-being, co-ordination, powers, etc. of our governments was an object in itself. It has followed that, since the governments were to be beneficiaries, they might as well take the business of constitutional amendment into their own hands: like the mortals who watched while the gods, high on Mt. Olympus, wrested from the titans and disposed among themselves powers of life and death, Canadians have watched the first ministers up at Meech Lake, assume for themselves Britain's former powers of constitutional amendment.

We should reject this bystander's role. No longer do kings "give" a consitution to their people; even less should rulers settle a set of constitutional rules on themselves. The questions of number of provinces, division of powers, revenues, expenditures, number of legislatures, procedures, franchises, majorities and so forth are now not matters for politicians' preference but are elements in the structure of governments we choose for ourselves; and amend for ourselves. This is just as true for local governments as for the others. The desirability of the extension of municipal autonomy in planning, regulation, taxation and spending is now treated as a day-to-day matter for provincial governments. But this part of our constitution ought not to be for governing parties' decision, but only for their implementation. We have a three-level governmental structure now. How have our constitution-makers at Meech Lake changed this structure's capacity to provide the public services sought by the citizen-taxpayers?

DIVERSITY AND COMPETITION WITHIN GOVERNMENT

As an economist, I can suggest an increasingly relevant aspect of this question. How does the Meech Lake amendment to our constitution affect *diversity* in the provision of public services? Does it provide, or enhance, the availability of alternatives, or does it narrow our opportunities? An analogy between the public and the private sectors of the economy may be suggestive. Where the private sector is fragmented, competitive, and overlapping, competition and diversity thrive. The result, within the private sector, tends to keep productivity, choice and product-quality rising, and to keep profits and monopoly in check.

So, it may be expected, a plurality of "power centres" in the public sector provides a wider choice of government policies, experiment, emulation, trial and error and *checks* on a tendency toward monolithic unitary government.

Indeed, this "check" idea has been around since the time of John Locke, and it was inserted into the U.S. Constitution and in later constitutions in the form of "checks and balances." It has been honoured even in Britain, in its recourse to federalism and devolution at home and in the Empire.

The federalists who helped design the U.S.Constitution knew that, to supplement their separated Judiciary, Executive and Legislature, the U.S. system of division of power under federalism would also tend to break up concentrations of governmental power and so preserve choice. Furthermore, while as in all democracies the constitution-makers relied on electoral recourse to keep their governments representative and responsible, they did not forget a system of popular constitutional amendment that allowed the whole structure of franchise, federalism and governmental plurality to be reviewed and renewed periodically.

The argument in favour of a sort of competition between governments, not only at each level but also at three different levels was more often heard in the 1970s than in the 1980s. For example, in 1975, comparing Australian and Canadian constitutions, Mark Sproule-Jones classified as an "undue concentration of authority" the limited number of independent governments in both countries. This reduces the ability of an individual voter to select or determine which level of government will provide her or him with particular services. But it is not ". . . in the long-run interests of either [senior] level of government to increase the number of variables and concomitantly the uncertainty of devising institutional solutions for the provision of government goods."[2]

More recently, the argument for increased diffusion and overlapping of centres of governmental powers has been negative and implicit, at best. For example, consider the position of Alan Cairns. He has contended that the basis for Canadian provincial governments' rising strength has not been ethnicity of culture, but merely the accident of institutions, in this case of regional electoral systems. I would suggest that the power of such institutions to fortify the governments they create is increased when each is given a constitutional monopoly of certain services. Such considerations surely undermine the theory that there is anything natural about the present number and powers of governments. A change in the number of provinces, a change in their boundaries, or in the number of levels of independent governments, could all engender their own natural strengths and loyalties. It is far from ridiculous to say that Kelowna and Victoria are each more "natural" candidates for separate self-government than are geometrical artifices like Alberta and Manitoba. Notions such as these have not been urged by Cairns,[3] but are to my mind supportive of a constitutional status for local government.

Ideas about diversity and plural power centres are always in flux. But in Canada too often the battle is confined to the extent of narrowing the focus of power: to Ottawa, or to the provinces alone? In this sense we can see both 1982 and Meech Lake as further chapters in our story of "competitive" organs of government. To see this, consider three provisions of Meech Lake.

THREE PROVISIONS OF MEECH LAKE

The 1982 repatriated constitution and the Meech Lake accord contain three provisions that affect the diversity of the Canadian governmental structure. One has to do with the spending power of one level of government on matters assigned to the legislative powers of the others; a second has to do with the location of powers to manage resources; and the third with the future power to amend provisions such as the first two.

The spending power

Those who favour an increase in the resources available for urban purposes have expressed alarm about recent constitutional changes. They fear that Ottawa will no longer be able to initiate proposed new economic functions because Meech Lake enhances the ability of the provinces to retain jurisdiction while gaining increased spending power. My comment is that a more optimistic view is possible. Ottawa's "spending power" might have been altogether abolished; but it is maintained. If it had been abolished, the power of the federal system to provide citizens with the capacity to choose electorally by which government they wish a public service to be provided would have been further narrowed. As it is, Section 106 A (1) gives voters electoral powers to influence the choice. For example, instead of the power to provide day care centres being settled by the first ministers at Meech Lake, the matter is left for political and voter resolution, to be judged by, among other things, governmental performance at the various levels.

Maintaining provincial resource management independence

If the pre-1982 taxation powers of Sections 91 and 92 had been maintained, then the powers of the provinces not only to get revenues but also to keep the power of taxation and charges to constrain, manage and renew natural resources would have been limited. Thus, of course, the western *governments* have been pleased that the new Section 92A gives them new powers to tax natural resources in the provinces in any way. Governments always like non-tax revenues.

In general, Section 92A reduces the financial dependency of one governmental level on another. Thus it is more likely to promote diversity than monopoly.

More specifically, we, as citizens and voters, can be pleased that the provinces can now use *both* the landlord's two sources of authority over the Crown lands: the specifications written into the resource leases; and the deterrents and incentives in the systems of royalties and taxes. This is a great gain. It should work well for *rural* towns and centres: for it strengthens the security of their dependence on local resources and their continuous management. In this way it strengthens rather than weakens both the municipal level and the provincial levels.

The system of amendment

For me, the pity of the Meech Lake amendment is that the drafters did not look ahead to an unknown future any more wisely than the 1867 drafters of the BNA Act. Much like the first constitution, the Meech Lake amendments have been silent on urban matters. This might not be so bad were not the most recent amendments regarded as final. The proposed future amendment procedure requires both initiation by, and near-unanimity among, the provincial governments, the very governments that now have complete control over municipal affairs. This arrangement is understandable. Governments and their public services do not voluntarily propose procedures that may be used to reduce their own future discretionary powers, such as those over municipal governments.

To serve future urban ends, or to increase future overall diversity of government, or indeed to serve any explicitly stated aims, the Meech Lake "system" needs radically changing. Amendment by bargaining among first ministers, wielding their respective legislative majorities, needs to be transformed to a more consultative, deliberative process. Such a process at the very least would involve a wide list of participants. I personally would have it employ a plebiscite, popular initiative, or a constituent assembly in some form. Otherwise, under 1982 and Meech Lake procedures, the provinces will never more or less unanimously initiate constitutional changes that would widen the exercise of individual choice at the municipal level.

It is not *economic* problems that will prevent the flowering of a quasi-independent third layer of government. It is the amending procedure of the 1982 constitution and the Meech Lake agreement.

NOTES

1. A.D.Scott, "A Note on Grants in Federal Countries", *Economica*, 17, 1950, pp.416-22, republished more recently in *The Economics of Federalism*, B.J.Grewal et al (eds), Canberra and London, 1980, pp.201-208.
2. M.H. Sproule-Jones, 1975, *Public Choice and Federalism in Australia and Canada*, Canberra: Centre for Research on Federal Financial Relations, pp.82-3. For more on the apparent tendency of a provincial legislature, acting as its province's constituent assembly, to centralise powers by withdrawing them from local governments and assigning them to provincial departments, see Albert Breton and Anthony Scott, 1978, *The Economic Constitution of Federal States*, Toronto: University of Toronto Press, p.96. Another provincial instrument for containing the power of local voters to control the provision of local services is to superimpose on local governments systems of regional prefectures and administrations.
3. A.C. Cairns, "The Governments and Societies of Canadian Federalism", *Canadian Journal of Political Science*, 1977, 10, pp.697-725.

PART III

SENIOR GOVERNMENT AND LOCAL GOVERNMENT RELATIONS

SOCIAL SERVICE DELIVERY AT RELEVANT GOVERNMENT LEVELS

Andrew Sancton

". . .Meech Lake handcuffs the federal government in any effort to promote national standards in social programs. . ."[1] Such was the conclusion of Leonard Shifrin, a respected syndicated columnist on Canadian social policy in his year-end discussion of political developments in 1987. Writing six months before,long before the death of Rene Levesque and the subsequent upheavals in the *Parti Quebecois*, Jacques Parizeau termed Meech Lake a "grotesque" step backward for Quebec because it enshrined the federal spending power in the constitution, did not guarantee *full* fiscal compensation to opting-out provinces, and required such provinces to comply with national objectives in implementing programs of their own.[2] In the absence of any court interpretations of the Meech Lake provisions, both positions, for the moment, are plausible. The objects of this paper are to sketch out the existing federal-provincial-local arrangements for the delivery of personal social services and to discuss the possible impact of the Meech Lake Accord on future developments.

The term "personal social services" is used in this paper so as to exclude issues relating to income security, that is, cash payments or tax refunds from governments to individuals. Neither is the paper concerned with broad social-policy concerns such as health, housing, and education. The services under consideration are those of the kind currently eligible for subsidization through the *Canada Assistance Plan* and the *Vocational Rehabilitation of Disabled Persons Act*. In Ontario, such services are within the jurisdiction of the Ministry of Community and Social Services. They include child welfare and protection, family counselling, subsidized child daycare, vocational rehabilitation, and non-institutional residential and counselling services for the mentally and physically handicapped.

FEDERAL INVOLVEMENT

Significant Canadian federal involvement in social services started with vocational rehabilitation. In 1961 Parliament approved the *Vocational Rehabilitation of Disabled Persons Act*, which provided 50 percent federal funding of comprehensive provincial programs involving assessment, counselling, restorative services, provision of prostheses and other technical devices, including wheelchairs, vocational training and employment placement, provision of books and other tools and equipment required in rehabilitation, and the payment of maintenance allowances.[3] Although the VRDP Act remains a separate statute, it is now administered by the Canada Assistance Plan directorate of Health and Welfare Canada. Expenditures in 1983-84 were $67,549,000.

The Canada Assistance Plan became law in 1966.[5] In financial terms its most important function is to fund 50 percent of all provincial welfare assistance programs aimed at the disabled and destitute. In 1983-84 the cost of such funding comprised just over two-thirds of all CAP expenditures. For the purposes of this paper, however, it is the remaining amount of about $1.172 billion[6] which is of interest.

CAP provides to each province 50 percent of all staff-related expenditures paid for by the province or by its municipalities above 1964 expenditure levels for welfare services directed at low-income people. To qualify for federal funding the provinces must demonstrate to the federal authorities that clients receiving the services are genuinely in need (that is, that they are part of a family receiving public welfare monies; that, if over age 65, they receive the means-tested Guaranteed Income Supplement; or that, if children, they are in foster care and/or in the custody of a provincially-designated child welfare authority) or that they are likely to be in need as determined by an income test. For most services, the income test need not be applied to all clients; the federal requirements can be satisfied by the province producing sample surveys of clients' incomes. The federal government will then pay its grant on the basis of the proportion of the clients falling below the designated level which, in any event, is only slightly above the income level generated by public welfare payments. Unlike other services to people in need, CAP funding for day nurseries (daycare) requires the levying of a user fee on those parents with incomes above a designated level.[7]

It is extremely difficult to specify what proportions of social-service spending is covered by the federal government. This is because each province defines and organizes its social services in a different way, making it impossible to generate uniform data. Taking Ontario as an example, it appears that CAP and VDRP together fund about 23 percent of the social service expenditures of the provincial Ministry of Community and Social Services.[8] Other federal monies find their way to such social service institutions as homes for the aged and group homes through health insurance payments, block grants for extended health care, old age pensions and family allowances, but their extent is almost impossible to determine.

In any event, for Ontario at least, it appears that almost half the province's social service expenditures are *not* being matched by CAP or VDRP funds. This implies either that the services are being provided to people not in need or not likely to be in need, in which case user fees might be seen as appropriate, or that the province has not been sufficiently aggressive in seeking CAP funding across the full range of services it subsidizes.

Recently the provincial government has acted on the latter supposition. The passage in 1984 of the *Child and Family Services Act*, which brings together all provincially-subsidized children's institutions, except day nurseries, in the same legislative framework, opens the way for all of them to qualify under CAP as "welfare services." Children's mental health centres, on which the province spent $95 million in 1983-84[9] have hitherto not been CAP funded, presumably because their legal base related more to health than to welfare. Now that they no longer have a distinct statutory existence and are simply "child and welfare services", CAP funding for that proportion of their clients who are in need or likely to be in need seems inevitable.

The Canada Assistance Plan is the only major federal program for the funding of Canadian social services. Although there is no statutory limit on the funds available, growth in expenditures has, until now at least, been kept under control as the result of two main factors:

1. all federal expenditures must be matched by provincial expenditures and provinces have proven reluctant to extend significantly their own financial involvement;
2. federal funds can only be spent on people whose income is below levels specified by the Federal government.

For a short period in the late 1970s it appeared that social services were going to be removed from the Canada Assistance Plan and that, instead, the federal government was going to pay a block grant to the provinces which they could spend as they pleased.[10] Predictably, the plan was opposed by the social work profession, but it is unlikely that, by themselves, social workers could have blocked it. The plan was eventually dropped by the Trudeau government as part of its 1978 expenditure slashing. Trudeau's strategy for introducing social service block grants involved spending *more* federal money so as to ease its political acceptance. When Trudeau decided the money was no longer available, the plan was dropped.

Trudeau assumed that federal cost-cutting in the short term was impossible and instead tried to renounce long-term responsibility. When the price for the latter was deemed too high, he accepted the status quo. An important federal presence in social service funding and policy-making still remains. It is the provincial governments, however, which make the important decisions about the allocation of social service budgets to competing programs and interests.

THE PROVINCES' ROLE

Prior to Confederation the poor and the handicapped, to the extent that they received special treatment at all, were the responsibilities of local communities, defined in terms of territory, ethnicity, or religion. After Confederation provinces were involved because, by then, large institutions or asylums were seen as the most humane and efficient way of looking after those who could not manage on their own. Although these institutions required such high levels of public investment that provincial sponsorship in one form or another was inevitable, there was no attempt to develop integrated political and administrative structures so as to implement what we would now call "social policy." Instead, institutions were relatively autonomous, governed by local boards of directors and/or a powerful professional director. The main function of the state or the province was to provide money.

Toward to the end of the nineteenth century such institutions, especially for the children and for the poor, became less popular.[11] Progressive thinkers now held that orphans and abandoned children needed new parents, foster or adoptive, not orphanages; the poor needed friendly assistance and firm guidance, rather than charity and almshouses. The social work profession was born.[12] Initially these developments had little impact on the structures and finances of government. The activities of social workers were financed by philanthropists convinced that donations aimed at preventing social problems would ultimately reduce the need for public expenditures on institutions or relief.

Eventually, private philanthropy could no longer sustain the cost of "preventative" social work, which increasingly had become a kind of crisis intervention or social control. In any event, the belief that some people in society need help from the community in a form other than cash payments or long-term institutionalization is at the heart of the modern thinking about personal social services.

In recent years Canadian provincial governments have established integrated social service departments to control and finance the delivery of social services within their respective territories. However, we must be careful not to assume that the mere creation of such departments of social services necessarily means the emergence of policies which have subsumed more narrow professional interests and specializations. Just because a single provincial department might have responsibility for service to both the mentally retarded and the emotionally disturbed does not mean that programs are available at the local level to help with both problems at the same time. To determine the way in which services actually relate to each other in states and provinces, it might be more useful to study systems of professional accreditation than of political and administrative organization.

THE LOCAL LEVEL

In virtually every community in Canada there is some form of locally organized social service. At a minimum, these services might take the form of part-time child-care organized by churches, special events for senior citizens sponsored by local town councils, or information and referral services sponsored by a United Way campaign. Consequently, there is always some kind of uniquely local dimension to the funding and organization of social services, no matter what community is under study. Nevertheless, there are some communities, mainly in the smaller provinces, where, for all practical purposes, major social services are provided by the provincial government. In these communities there is little or no municipal involvement; there are no local special-purpose bodies with control over social services; and there are no heavily subsidized non-profit bodies with service-delivery responsibilities. Social workers operating in the community are employed by the state or the province and work from field offices of the government social services department. In relation to the total Canadian population, there are very few people living in such communities. Most of the population lives in areas in which social services are provided by municipalities, special-purpose bodies, local agencies receiving high levels of provincial subsidies, or some combination of all three.

Municipalities in Canada do not have direct control over most social services. In Ontario, counties, regions and cities use provincial subsidies of up to 80 percent to provide general welfare assistance, subsidized child daycare, and homes for the aged, but they do not directly control vocational rehabilitation, community mental health facilities, or services for the mentally and physically handicapped.[13] They pay 20 percent of the cost of child protection but do not have direct responsibility. Municipalities in most other provinces have even less involvement in social services.

Municipal responsibility for social services does not necessarily imply that it is municipal employees who would directly deliver the services.[14] Municipalities could contract out the service—such as home care for the elderly or group homes for adolescents—to commercial or non-profit organizations.[15] Such contracting-out is growing more popular in all spheres of municipal government. Competition for contracts is meant to increase efficiency and effectiveness by subjecting the providers of public services to the rigorous discipline of the marketplace. The contracting-out of social services through a genuinely competitive tendering process is not to be confused with the permanent subsidization of non-profit social service insitutions. This latter practice is common in Canada, particularly in Ontario, where it is the main mechanism for social service delivery. In Ontario, however, it is invariably the provincial government which is granting the major subsidies, not the municipality.

Two Canadian provinces—Quebec and British Columbia—have pioneered another alternative mechanism for allowing local communities to control the organization and delivery of social services. In 1971 in Quebec and 1974 in British Columbia, legislation was passed to establish special purpose bodies made up of local citizens to manage the delivery of social services in the different regions of the provinces. The British Columbia experiment has since been abandoned and the province has taken direct control, but Quebec's unique system remains in place,even though it has not lived up to original expectations.[16]

Prior to 1971, Quebec's arrangements for social services were much like Ontario's now: municipal involvement was limited to administering welfare payments while the province directly funded hundreds of church-related institutions and voluntary organizations which provided a fairly comprehensive social service network, particularly in urban areas. Following the Castonguay-Nepveu Report, which criticized the fragmentation of services, the province not only integrated social service delivery systems at the local level but also combined them with health services to create "local community service centres" controlled, in theory at least, by local boards of directors, some members of which were directly elected by the clients. Specialized social service establishments receiving government funding were combined to form "social services centres", residential institutions all became "reception centres", and hospitals became "hospital centres". All the privately controlled boards of directors gave way to public boards chosen by means specified in the legislation and complete responsibility for funding was taken over by the provincial government. Within each of the thirteen designated regions of the province a "regional council of health and social services" was established in order to identify overlaps, co-ordinate programs, and promote services meeting hitherto unmet needs.

The system has not been a success. Total expenses have risen dramatically as low paid employees of previously charitable institutions caught up to public-sector wage levels. New levels of bureaucracy have diverted resources from direct service delivery, without noticeably improving the effectiveness of the overall system. Public involvement in elections to boards of directors of various institutions has been minimal; turnouts of around 2 percent of the eligible electorate have not been uncommon. The regional councils have had uneasy and unproductive relationships with either the ministry field offices, the local health and social service institutions, or both. It is unlikely that Quebec's system will be the model for other jurisdictions seeking to reform their mechanisms for social service delivery.

THE IMPACT OF MEECH LAKE

In the absence of Meech Lake, the federal government, in theory at least, has considerable potential influence over provincial-municipal relationships concerning social services. In theory, the federal government could implement a shared-cost program, one of the conditions of which would be that provinces would have to ensure that the service was delivered by a particular type of agency, perhaps a municipality. The Canada Assistance Plan has a weak version of such a provision in that federal approval is required for each non-profit institution delivering welfare services'' for which a province is seeking subsidies. Commercial operations are not eligible for welfare-services subsidies, although they can be used to deliver ''general assistance.'' This distinction explains both how Ontario receives CAP funding for subsidized places in commercial child daycare centres and why its means tests for subsidized daycare are tougher than in most other provinces.

Meech Lake would make it impossible for the federal government to impose similar kinds of conditions on any new social programs, unless it was willing to argue that such conditions were integral parts of ''the national objectives'' of the program. Any province not liking the conditions could simply opt out. It is important to note, however, as Jacques Parizeau has reminded Quebeckers, that such a province is guaranteed only ''reasonable compensation'', which might not necessarily be the same as full compensation. In such conditions of uncertainty there might be an incentive for a cautious province to participate in a program even though it does not support all federal conditions.

In its recently announced child-daycare policy, the federal government has committed itself to funding 75 percent of the cost of provincial start-up grants for capital costs of non-profit child-daycare centres. The Quebec government has pointed out that, as a matter of principle, it would not submit to federal conditions requiring that the shared funds be spent only on a particular type of daycare facility.[17] The implication is that, had the Meech Lake Accord already become part of the constitution, Quebec would have formally opted out of the daycare program so as to avoid what it sees as unwarranted federal conditions. Given the realities of Canada, it is difficult to object to this state of affairs.[18] The federal government is entitled to try to influence provincial decisions in areas clearly within provincial jurisdiction; a provincial government can avoid the intrusion and receive "reasonable compensation" if it explicitly "carries on a program or initiative that is compatible with the national objectives." Premier Bourassa is right to point out that such an arrangement entrenches what Quebec has been doing in relation to such programs over the last twenty-three years. For Bourassa, this is an accomplishment; for Parizeau it is an admission of defeat in the ongoing battle to prevent *any* federal intrusion in Quebec jurisdiction. Parizeau has not acknowledged, however, that because of the "distinct society" provision in the Meech Lake Accord, courts might rule that Quebec has more flexibility in relation to "national objectives" than other provinces have.

Because federal legislation allowing Quebec to opt out has always applied to other provinces as well, there is no reason why the constitutional entrenchment of opting out should not similarly be extended to all provinces. Since other provinces have not opted out in the past, there is no obvious reason to believe they would do so in the foreseeable future. Even if they did, the courts would still have an obligation to ensure that their programs are "compatible with national objectives."

Leonard Shifrin's view that Meech Lake is a disaster for Canadian social policy reflects the conventional wisdom of most practitioners. They are used to seeing conditional federal money as the source of their power over politicians and bureaucrats at both the provincial and local levels. The existence of federal monies means that little effort need be extended to mobilize local support for particular social-service programs. In fact, the general public need know very little at all about who runs the programs, how much they actually cost, or what results they appear to be having. Were there more such public information and involvement, some worthy programs would likely be under intense political pressure to reduce costs. But in the longer term at least, more intense and public scrutiny of local social services could mobilize new allies for practitioners while at the same time breathing renewed life into the local political process.

I believe both in the objectives of most personal social services and in the notion that local communities should be democratically self-governing. Such beliefs are often in conflict. In assessing the Meech Lake Accord, they are not. Meech Lake ensures that the federal government can still cause new social-service programs to be created right across the country, with the possibility of special flexibility for

Quebec depending on interpretations of the "distinct society" clause. However, because provinces are now clearly protected against the imposition of detailed federal conditions, their pre-eminence in this field is confirmed. Rather than fret about the *possible* loss of jurisdiction at the federal level, I would prefer to explore new ways to get local citizens more involved in political decisions about the social services being provided in their own communities. In my view this means an increased municipal role and a decreased role for provincially-funded non-profit agencies run in theory by boards of directors and in practice by the local provincial bureaucrats and social-service professionals. This is an issue on which, quite properly, the Meech Lake Accord has nothing to say.

NOTES

This is an abbreviated and revised version of a paper entitled "The Tri-Level Politics of Social Services in Canada and the United States," delivered at the conference on "Constitutional Regimes and the City: The U.S., Canada, and Britain", Wayne State University, Detroit, Michigan, April 2-3, 1987.

1. Leonard Shifrin, "1987 Milestones Endanger Social Policy", *The London Free Press*, December 29, 1987.
2. Jacques Parizeau, "Un grotesque retour en arriere", *Le Devoir*, May 6, 1987.
3. Canada, Health and Welfare, *1985-86 Estimates* Part III, Expenditure Plan, Ottawa: Minister of Supply and Services, 1985, p.3-23.
4. Ibid, p.3-17.
5. For a useful recent analysis, see Derek P.J. Hum, *Federalism and the Poor: A Review of the Canada Assistance Plan*. Toronto, Ontario Economic Council, 1983. See also, Canada, House of Commons, *Fiscal Federalism in Canada: Report of the Parliamentary Task Force on Federal-Provincial Fiscal Arrangements*, Ottawa: Minister of Supply and Services, 1981, chapter 6; and Canada, Task Force of Public Review, *Service to the Public: Canada Assistance Plan*, A Study Team Report, Ottawa: Minister of Supply and Services, 1986.
6. Canada, Health and Welfare, *1985-86 Estimates*, p.3-21.
7. Ontario, Ministry of Community and Social Services, *Cost-Sharing Manual*, (looseleaf) 1982-84, p.5.

8. This figure excludes income-transfer payments and any contributions from municipal governments. It is calculated from Canada, Health and Welfare, *1985-86 Estimates*, and Ontario, *Public Accounts 1983-84*, Toronto: Queen's Printer, 1984.
9. Ontario, *Public Accounts 1983-84*, Vol.1, p.4-89.
10. Hum, *Federalism and the Poor*, pp.22-26.
11. Patricia T. Rooke and R.L.Schnell, *Discarding the Asylum: From Child Rescue to Welfare State in English Canada, 1800-1950*. Lanham, Md.: University Press of America, 1983.
12. Roy Lubove, *The Professional Altruist: The Emergence of Social Work as a Career, 1880-1930*. Cambridge, Mass.: Harvard University Press, 1965. See also James Pitsula, "The Emergence of Social Work in Toronto", *Journal of Canadian Studies*, Vol.14, (1979) 35-42.
13. See Clifford J. Williams, *Decades of Service: A History of the Ontario Ministry of Community and Social Services, 1930-1980*. Toronto: Ministry of Community and Social Services, 1984. For a description of the role of an Ontario municipality (Niagara Region) in relation to aging, see Kenneth Kernaghan and Olivia Kuper, *Coordination in Canadian Governments: A Case Study of Aging Policy*. Toronto: Institute of Public Administration of Canada, 1983, chapter 5. See also Andrew Sancton, *Municipal Government and Social Services: A Case Study of London, Ontario*. Local Government Case Studies No.2, Department of Political Science, University of Western Ontario, 1986.
14. For alternatives in the mental retardation field, see Michael Aiken *et al*, *Coordinating Human Services*. Washington, D.C.: Jossey-Bass, 1975.
15. Kenneth R. Wedel, Arthur J. Katz, and Ann Weick, *Social Services by Government Contract: A Policy Analysis*. New York: Praeger, 1979.
16. For Quebec, see Andrew Sancton, *Governing the Island of Montreal: Language Differences and Metropolitan Politics*. Berkeley: University of California Press, 1985, chapter 9; for B.C., see Michael Clague, *et al*, *Reforming Human Services: The Experience of Community Resource Boards in B.C.* Vancouver: University of British Columbia Press, 1984.
17. Shifrin, "1987 Milestones."
18. For a valuable extended defence of Meech Lake, see Thomas J. Courchene, "Meech Lake and Federalism: Accord or Discord?", Robarts Centre for Canadian Studies Working Papers Series 87-F02, York University, November 1987. See also Geoffrey Norquay, "Social Spending after Meech Lake", *Policy Options*, October 1987, pp.11-12.

BEAVERS AND CATS:*
FEDERAL-LOCAL RELATIONS IN THE UNITED STATES AND CANADA

Victor Jones

The idea of North American continentalism and controversy about it are as old as the 1760s. The controversies continue, most prominently in the 1980s among politicians, businessmen, farmers, workers, journalists and academics about the extent to which goods, services and influence should flow freely between the United States and Canada. To some people free trade would herald the end of Canada's distinctive cultural identity, as well as its economy and its polity. Last year an American and a Canadian geographer attacked vigorously, "viscerally" and in a scholarly fashion the:

> constructs that blithely lump Canada and the United States into the same analytical laundry basket without appreciation of the diversity of the wardrobe to be laundered.[1]

I will not discuss here whether they succeed in establishing the North American city as a typological myth and in demonstrating that Canadian and American cities are so systematically different from each other that they are non-comparable. I see no reason, however, to use the fear, perhaps well founded of the consequences of continentalism to justify a protectionist attitude toward generalizations based upon both similarities and differences among the urban settlements of the two countries.

Although Goldberg and Mercer are not the first to point out the significance of differences in political cultures in the two countries for understanding how institutions operate, their book serves us well in its emphases. I believe, however, that each of the findings and conclusions

* title attributed to Patrick Smith upon reading his commentary!

they summarize in their final chapter tells us less definitively about how and why we are different than we need and might wish to know. Their conclusions and findings do, however, outline a research agenda that should be considered seriously on both sides of the border by both domestic and comparative students of the governance of metropolitan North America.

There are Canadian and American scholars who would challenge the assumptions that underlie some of their conclusions, for example that "The relative health of Canadian and American central cities is related to . . . fragmentation and balkanization in the United States."[2] I do not wholly agree with public economists and public choice political scientists who challenge such a conclusion, but a research agenda drawn out of Goldberg and Mercer's last chapter should be open to and actively encourage both re-examination of old and the birth of new suppositions, hypotheses, analyses, findings, conclusions and prescriptions. Such studies will be pursued on both sides of the border. Some will have to bear the charge of "continentalism," others of "isolationism" but some I hope will be not only judiciously but empirically mixed.

Since we are primarily concerned in this paper with national-local relations, Goldberg and Mercer's chapter on "Political Structure, Culture and Institutions in Canada and the United States" is especially relevant. Of course, they are not the only ones, as they freely admit, to highlight basic value and institutional differences between the two countries.[3]

For my purposes, which are to raise a few questions about why American local governments play a more active and influential role in intergovernmental relations and in the formulation of national and state policies than Canadian municipalities, Goldberg and Mercer's treatment of political structure, culture and institutions is a very useful reminder to students of urbanism on both sides of the border that:

> . . . an understanding of the political systems and structures in Canada and the United States lays the groundwork for a proper appreciation of urban government and of the urban development process itself . . . [4]

We must begin by recognizing that, in at least one respect, Canadian and American local governments are alike. In both countries they are, at common law and under the constitution, "tenants at will" of the provinces or states. In Canada local servitude to the province is a recognized fact of life as well as of law. In the United States all courts, including the United States Supreme Court, follow Dillon's rule, or one might say Dillon's cliche since it is so often quoted and cited, holding local government to be in the same state of servitude to the state as it is to the province in Canada. As Judge Dillon said in 1868:

> Municipal corporations owe their origin to, and derive their powers and rights wholly from the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so may it destroy. If it may destroy, it may abridge and control. *Unless there is some constitutional limitation on the right*, the legislature might, by a single act, *if we can suppose it capable of so great a folly and so great a wrong*, sweep from existence all of the municipal corporations of the state, and the corporations could not prevent it. We know of no limitation on this right so far as the corporations themselves are concerned. They are, so to phrase it, the mere tenants at will of the legislature. (Emphasis added)[5]

Subsection 92(8) of the Canadian Constitution could not be more explicit, even though it shuns the metaphoric suggestions of Judge Dillon.[6]

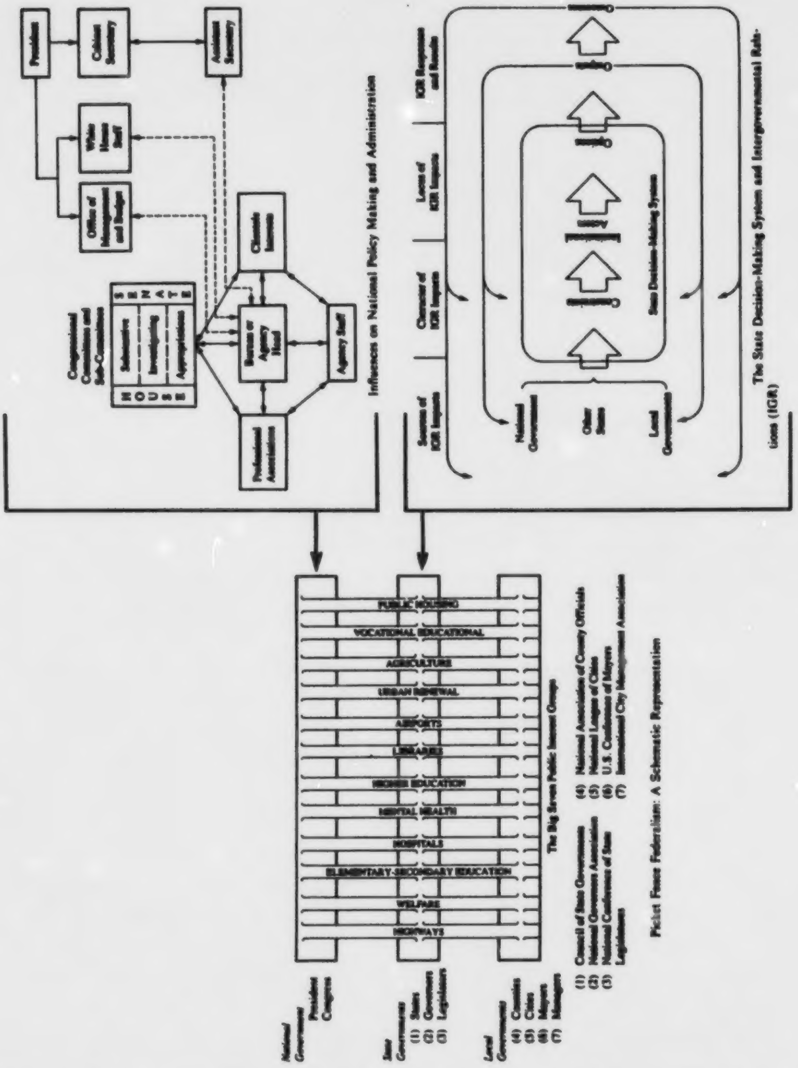
The metaphor, however, continues to thrive on both sides of the border. Everyone refers to local government as creatures of the state or provincial governments. However, the right of a legislature to create, modify, or destroy is just a right, that is, it is only a legal *authority* to act. Even though the right may be plenary, it must be distinguished from *power*, or the ability of the authority to act in full or in part, to exercise unfettered choice to act at any time, any place, or to any extent it chooses. Jiggs, in a comic strip of my childhood (then known as the funny papers), finally recognized the difference between *authority* and *power* when, after repeated attempts to put the cat out for the night, followed each time by the cat's reentrance through other doors and through many open windows (the multiple cracks of the organization), he gave up and said, "Well, stay in then. I will be obeyed."

Local governments in the United States behave like Jiggs' cat and frequently enough to make a systematic difference, and state and national governments often behave like Jiggs. However, the latter are able to exert their authority often enough that local governments can still be called "tenants at will." The questions are when, how, and where will the state governments exercise their will against their recalcitrant or innovative children? Dillon's rule in the United States is undergoing a process similar to:

> . . . the dissolution of the ancient Roman patriarchal family, begun under the Republic [and] fairly complete by the time of Justinian. Custom had long interdicted the absolute rights of the paterfamilias long before imperial rescripts restricted domestic rights to chastisement.[7]

One restriction, then, upon the *power* if not the *authority* of state government over local governments is included within Dillon's rule itself: "the legislature might, by a single act, *if we can suppose it capable of so great a folly and so great a wrong* . . . " He thus recognized the difference between *authority* and *power*. We need not call all action or inaction of the state either a folly or a wrong and state legislatures regularly legislate on matters and on procedures distasteful to local governments. It is difficult, at times, to determine whether legislative or congressional action is locally inspired or who is speaking for local interests. Cities, counties and special districts, in a specific locality or statewide, are often at odds with each other and seek favourable legislative settlement of interlocal conflicts. Local governments themselves are likely to consist of intra-organizational factions, each with direct and indirect relations to its state or federal functional counterpart. These relationships are said to constitute picket-fence federalism (see Figure A). In addition to common programmatic interests, which may or may not be in accord with the policies of local legislative bodies and chief executives, many local agencies and their employees seek state or even federal legislation to give them a preferred position in local government or to "improve" their compensation, working conditions and collective bargaining rights. Policemen, firemen and school employees have been very active along these lines in every state legislature. They have both state and national associations to lobby, with specific or general support from local, state and national labour unions. State and national associations of local governments have lost many a skirmish and even battles over these issues. At the national level, the U.S.Supreme Court has recently upheld congressional authority to regulate

Figure A



Influences on National Policy Making and Administration

The State Decision-Making System and Intergovernmental Relations (IGR)

Picket Fence Federalism: A Schematic Representation

Figure 303 (page 63); Figure 6-2 (page 195); and figure 7-1 (page 238), from *Understanding Intergovernmental Relations*, 3rd Edition by Deil Wright. Copyright (c) 1988, 1978 by Wadsworth, Inc. Reprinted by permission of Brooks/Cole Publishing Company, Pacific Grove, CA 93950 the wages and hours of state and local government employees.[8]

In the United States, individuals and organizations are constantly trying to get governments to act, to refrain from acting, or to provide symbolic or real support for what the individual or organization wants done or not done. It is understood that when they are not successful at any point in the American separation-of-powers federal system, they may move their efforts from one branch (legislative, executive or judicial) to another branch or from one level of government to one or both of the other two levels. Much strategic and tactical planning is involved in deciding when and where to move next, for example in waiting for ripe and potentially favourable circumstances before litigation.[9]

Sometimes the organizations are statewide, or even national. Many of them, however, have state, regional or local units or affiliates. Individuals who belong to, work for, or direct such organizations live and are active in specific localities or regions.[10] Members of many kinds of organizations use and are, in turn, used by elected and appointed officials at national, state and local levels as subjects of pressure, or as allies or enemies. Canadian governments are not strangers to this practice. David Hoffman shows how both the Ontario government and the opposition use interest groups in parliamentary debate and by individual ministries within the government: "Some groups or associations are privileged in their relation with government because they are in fact the creatures of government."[11]

However, the basic explanation of the differences in both law and behaviour of local governments in the two countries is that one operates under a fused authority-parliamentary system and the other under a system of a diffused separation of powers at both the national and state levels. It has been well said that the basic operative difference is that Canada has Quebec but no Congress and the United States has the Pentagon but no Parliament. The usual explanation of the different roles played by local governments and of the provinces and states is that the British North America Act contained a lengthy and explicit division of authority over very specific matters which precluded the intrusion of the national government into urban affairs. Sections 91 and 92 would undoubtedly have had some effect on national-provincial, provincial-local and national-local relations even if Canada were not governed under a parliamentary system. But I suspect that the history of informal and even the mixture of formal-informal relationships would have been quite different if local governments and other organized interests had the opportunity to enter the "multiple cracks" of the American constitutional system.

It is not impossible, of course, that some members of provincial legislatures, especially if they are also members of cabinet, may have been spokesmen for the interests of local governments in their constituencies. Timothy Colton documents the close political and personal relationships of Frederick Gardiner, both before and after the creation of the Metropolitan Municipality of Toronto, with influential members of the Progressive Conservative party, including the Premier and other members of cabinet.[12] More recently, Paul Godfrey is reputed to have similar relations with the Ontario Progressive Conservative inner circle. One would like to know how the domed stadium was conceived and carried to full term through provincial-metropolitan interactions.

Henry J. Jacek says that:

> . . . by 1970 the community was fully mobilized against a Hamilton- Burlington region. This fact plus the presence of an important provincial cabinet minister, George Kerr, from Burlington while there were no ministers from Hamilton or Wentworth prior to 1972 made it increasingly clear that a Burlington-Hamilton region was politically improbable.[13]

He also wrote that since the premier's "home constituency was in Peel County it was most unlikely that Peel County officials' wishes [with respect to a Peel-Oakville amalgamation] would be overridden."[14]

St. Catharines was not so fortunate in its opposition to the creation of the Niagara Region. And in the creation of the Durham Regional Municipality, Katherine Graham reported that:

> There has been a consistent pattern: articulation of the desirability of input by other levels of government, particularly the municipal, followed by unilateral provincial policy announcements.[15]

She makes no reference to the participation, if any, of local or regional Members of the Legislative Assemblies.

In the United States informal contacts between a member of Congress and local officials in his or her district are commonplace. The extent of such exchanges as well as their outcome will be affected by political, ideological and personal relationships, but both senators and representatives are expected to listen to local officials and, if they can come to an understanding, to act on their behalf.

Two examples affecting local officials and local residents in the San Francisco Bay Area were slipped as "riders" into the omnibus continuing appropriations resolution signed by President Reagan on December 22, 1987. One rider approved the construction of one-million-square-foot twin 12-storey towers in downtown Oakland. An interlocal struggle by the mayor of Oakland to secure approval of the building was opposed by the mayor of San Francisco across the Bay. A compromise worked out by Rep. Ron Dellums (D-Berkeley and Oakland) and Rep. Nancy Pelosi (D-San Francisco) also provided for an additional 430,000 square feet of federal office building to supplement the five existing federal office buildings in San Francisco.[16]

Another example of this kind of relationship between Congress and local governments is a "rider" to the 1988 federal government financing bill which requires a consensus of members of Congress from the San Francisco Bay Area before rapid transit service can be extended outside the present three-county Bay Area Transit District (BART). Unless a court rules the amendment unconstitutional,[17] then local interests unable to achieve local satisfaction will have achieved their objective by turning to the national government. Apparently the rapid transit district board has decided to move immediately to develop a compromise acceptable to the local congressional delegation, that is to say, acceptable to the unhappy residents and officials of the portion of the district now without rapid transit, and will use the recess between sessions of Congress when congressmen will be at home, to develop such a federal-local agreement.

This is the latest instance of federal officials, in this case the nine-county Bay Area congressional delegation, exercising a veto over a directly elected local decision-making body. The sanction is that all federal funds for a rail extension outside the district are to be withheld until an *acceptable* compromise is reached.

But Congress has, since the enactment of the Voting Rights Act of 1965, authorized the U.S. Attorney General or, in certain circumstances, the District Court for the District of Columbia, to decide whether, among other proscribed actions, a municipality must change from a system of electing city councillors at large to a system of single member district election. Here, at least, Congress can prescribe the conditions which a local government must meet by revising its charter. The state legislature in effect is preempted from exercising its "plenary" authority over its local governments.

> All election changes in covered jurisdictions are subject to preclearance. The list includes (1) changes in electoral boundaries resulting from reapportionment or redistricting; (2) changes in the method of election (eg: from single member districts to election-at-large); (3) changes in the composition of the electorate resulting from annexations, consolidations, or incorporations [of new municipalities]; (4) provisions establishing voter registration requirements and candidate qualifications; (5) changes in the form of government (eg: from a council-manager to a strong mayor form); and (6) provisions setting bilingual election procedures and assistance.[18]

Cotrell reports that "Since 1970 an average of 9,019 election changes have been submitted annually to the U.S. Department of Justice."[19]

Congress acted under constitutional authority to enact appropriate legislation to see that:

> the right of citizens of the United States to vote shall not be abridged by the United States or by any state on account of race, color, or previous conditions of servitude.[20]

This raises the question, which can be answered only after several decades of developing constitutional jurisprudence, whether the Charter of Rights and Freedoms, as was the 15th amendment to the United States Constitution, will be interpreted judicially to affect the present intergovernmental authority relationships in Canada. I cannot speculate; I can only raise the question in light of the role of the judiciary in the United States in restricting state and local authority under the fourteenth and fifteenth amendments (and the judicial incorporation therein of many prohibitions of the Bill of Rights). This, of course, has been going on for decades but it is interesting and significant that the courts now issue orders to states and local governments to act positively to rectify constitutional wrongs and monitor, if not supervise, their responses. Other examples, in addition to legislative redistricting and annexation, are school desegregation and overcrowded state and local prisons.[21] In Kansas City a federal judge has ordered an increase in local property taxes and the imposition of an income tax on all workers, residents or not, to pay for improving the schools.

As the U.S. Advisory Commission on Intergovernmental Relations in 1981 reported:

> Another engine of judicial expansion has been the institutional process of Court involvement . . . Rather than simply prohibiting a certain practice, it established affirmative duties on the part of the defendant jurisdiction, since the latter had to institute specific reforms in order to comply with the law. A lack of compliance could produce increasingly detailed instructions on conformity, urged by the plaintiff. An unexpected degree of judicial involvement in the everyday administration of a school [as well as state and local penal and correctional facilities, environmental protections, etc., as we have seen above] could, and did thereby evolve from the process of enforcement.[22]

Along with the proliferation of federal categorical grants since the 1960s, grant litigation has increased apace. Over "four hundred different cases dealing with grants" were decided by the courts between 1974 and 1979. The trend has continued during the 1980s as financial retrenchments have provoked suits by many kinds of losers, including but not confined to, state and local grant recipients. Litigation has also arisen over conditions attached to categorical grants, especially in the fields of civil rights and the environment.

> The expansion of procedural and substantive due process concepts in the administrative law area and the willingness of the Federal Court of Appeals for the District of Columbia to apply a standard of reasonableness to actions of federal administrative agencies have also led to more litigation in the grants area.
>
> In addition, there are now [1979] over twenty laws which impose national policies on grants and establish terms and conditions that all recipients of grants must follow . . . These laws have given rise to numerous lawsuits brought by third parties who have been

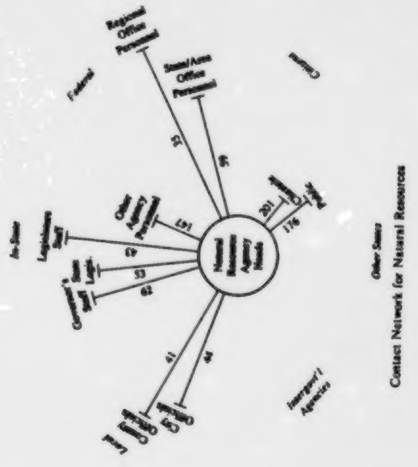
> denied assistance under a grant, who have been denied the benefits of the grant, or who have been adversely affected by a grant.[23]

The executive branch, from the President down to agency specialists, also plays an important and, sometimes decisive, role in developing intergovernmental policies, in formulating and promulgating rules and regulations for statutory implementation, and in developing budget proposals which would reduce or increase funds for programs of interest to local governments and other interested parties. We need only mention the New Deal, Presidents Kennedy and Johnson's Great Society and similar activity in, if not similar objects and magnitudes of, the New Federalism of Presidents Eisenhower, Nixon and Reagan. Intergovernmental relations, anti-bureaucracy, the crises of the cities, federal centralization, have all become standard issues in presidential campaigns. This year the U.S. Conference of Mayors is providing information, policy proposals and otherwise "lobbying" the candidates for the Democratic and Republican presidential nomination at least a year before the nominating conventions meet.

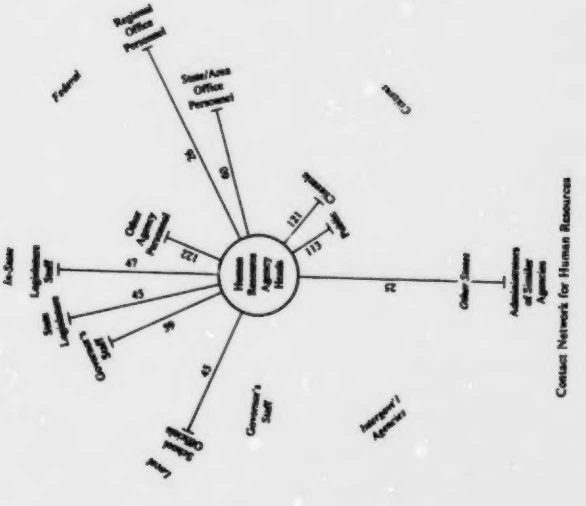
National associations of cities, counties, special districts, school systems, states, governors, and state legislators spend much of their time and attention in working with "friendly" White House staff, departmental and agency heads and key staff to suggest and push for policy and administrative changes, to pick up information about likely or impending changes in agency thinking about urban matters, to review and push for desired changes in proposed rules and regulations. Much of the news and other information sent by the associations to their members and their current and potential allies deal with such matters.

The federal executive branch, however, is not the homogeneous organization suggested by political and often scholarly references to the *Feds*! Individual agencies consist of subsystems often working at cross purposes—each with its own clientele both among organized and unorganized interests and among an equally heterogeneous Congress. Not even local government, as so often maintained, is so fractionated organizationally. All federal agencies are subject to Presidential control operating personally, or through the White House staff, the Office of Management and Budget and other central agencies. But no president or central agency can know everything or be everywhere at any one time. The chances are, therefore, overwhelming that each subunit can,

Figure B



Contact Network for Natural Resources



Contact Network for Human Resources

Figure 9-1 (page 308); Figure 9-2 (page 309), from *Understanding Intergovernmental Relations*, 3rd Edition by Deil Wright. Copyright (c) 1988, 1978 by Wadsworth, Inc. Reprinted by permission of Brooks/Cole Publishing Company, Pacific Grove, CA 93950 within very general and ambiguous guidelines, work with its own network of allies with a low chance of detection. Figure A reproduces two schematic representations from Deil Wright to illustrate the organization of the governments of the United States for Intergovernmental policymaking, implementation, and feedback. The complexity is further illustrated by Figure B, which shows *at the state level* the frequency of contacts among 270 state human resource administrators and 375 state natural resource administrators. To varying degrees inter-relationships of the kind we see in Figures A and B are occurring along each picket representing functions and agencies with their counterparts at each level and with their respective executive and legislative "superiors."[24]

Such complexity is common to most large organizations including governments, whether they are federal or unitary, parliamentary or congressional. The illustrations, based upon the United States, should not be read to exclude political and administrative influence and control from the President, Governor or Mayor, from the legislative bodies, or the courts. But the President has to deal with Gorbachev and the Congress has to deal with the President. The transmission of suggestions and commands from the top of the organization and the reception and response from below, are undoubtedly different in a parliamentary system. The constitutional dispersion of authority in a constitutional system of "checks and balances" and the inability of any President to "withdraw the whip" from any member of the House of Representatives or the Senate, with a similar absence of executive-party government in the states, has provided local governments with the opportunity to dilute Dillon's rule and to go directly, both individually and collectively, to the national government.

It is easy for local officials to make contact with their local representatives in Congress or with their state senators. Each representative maintains at least one office in his district and senators have offices in the larger cities of their respective states. Most members of Congress spend as much time as possible in their districts. Frequently they will be home every weekend and during the longer congressional recesses. A representative is running for re-election all the time since he can be defeated at two-year intervals.

Large and some medium size cities and counties, governors and some state legislatures, as well as some state and local agencies have representatives in Washington.[25] In 1980 thirty-one states, more than two dozen counties and over 100 cities had Washington offices with full or part-time staff.[26] According Deil Wright, most of these offices were established in the 1970s primarily for the purpose of expediting grant applications successfully through the federal bureaucracy. However, many more state and local governments and their agencies registered as lobbyists to support or oppose legislative actions. *The Congressional Quarterly* reports seven such registrations in 1974 and only 14 in 1975. Between 1976 and 1980 the number was between 21 and 27 annually. Beginning in 1981, however, the number of lobbyist registrations increased to 43 and to over 50 for each of the next four years.[27]

Table 1 shows the number of registrants for the period 1974-1985 by type of state and local governments and agencies. These lobbyists, except for those representing schools and other special districts, are auxiliary to the permanent organizations of state, regional and local officials located in the national capital. These organizations call themselves public interest groups and are known by the acronym PIGs. Some legislators, journalists, academics, and taxpayers insist that the word PIG is no acronym.

Feldman and Graham believe that the best interests of Canadian municipalities in dealing with provincial and federal governments can be served through the development of bi-lateral relations between individual municipalities and ministers and departments of senior governments. They admit that municipal associations may be useful and necessary for small municipalities whose individual interests can be easily ignored or rationalized away by powerful provincial and federal governments. Likewise, the interests of small communities can be served by consultation through regular intergovernmental meetings.

However, larger municipalities (whether one-tier, two-tier, or a municipal member of a two-tier system) "should conduct most of their relations with other levels of government on an individual basis."

> There is an important reason why municipal associations have a minimal role to play in the conduct of the intergovernmental relations of larger centres. Intergovernmental relations frequently involve distributive or redistributive decisions which would have the effect in an association environment of playing one centre off against the other, thereby weakening the association itself and the potential benefits which might accrue to its individual members . . . [In] the case of distributive and redistributive decisions, the

TABLE 1.

NUMBER OF NATIONAL LOBBYIST REGISTRATIONS BY TYPE OF SUB-NATIONAL GOVERNMENTS AND AGENCIES*

	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985
States	1	1	—	4	6	4	3	4	9	9	3	5
State Agencies	1	2	1	—	—	5	5	6	1	7	7	8
Counties	1	1	—	1	3	—	2	2	4	3	3	2
County Agencies	—	—	—	—	—	—	—	3	2	—	2	1
Cities	—	2	8	6	8	6	8	8	7	19	15	14
City Agencies	—	2	5	5	1	1	1	3	2	2	2	5
Colleges & Universities	—	—	—	1	—	—	1	—	—	1	3	2
School Districts	—	—	—	—	—	—	—	—	1	1	—	1
Other Special Districts	1	3	6	8	3	9	5	14	18	12	15	10
Associations of Gov'ts	1	—	—	—	—	—	1	—	1	2	1	—
Associations of Officials	2	3	1	—	2	1	1	3	5	1	2	1
Interstate Agencies	—	—	—	—	—	—	—	—	—	—	—	1
Total	7	14	21	25	23	26	27	43	50	57	53	50

*Calculated from *Congressional Quarterly Almanac*, 1975-1986.

> stakes can be quite high for an individual municipality. The best approach in such instances appears to be the pursuit of a solo course, for the potential benefits are greatest. This is true for dealings with both the federal and provincial governments when distributive or redistributive decisions are involved.[28]

If a serendipitous appearance of common local interests emerges, then *ad hoc* interlocal coalitions will suffice. They do see the utility in Ottawa of a clearing-house and representation service to be provided by a national urban association. But negotiations, say Feldman and Graham, should not be left to a third-party.[29] They feel that municipal associations are under the control of officers and staff who are motivated by organizational imperatives to the frequent disregard of particular municipal interests and to the inevitable seeking, as water seeks its own level, for the lowest common denominator in policy positions. The on-again, off-again organizational battles between the National League of Cities and the U.S. Conference of Mayors may be a good example of what Felman and Graham fear. However, the Canadian Federation of Mayors and Municipalities might have been more forceful, resourceful, innovative, and effective if it had been challenged by another association claiming to represent the same or overlapping membership. Furthermore, the history of the two national municipal associations in the United States shows alternating periods of conflict, cooperation, and even jointly staffed activities.[30] Moreover, under the Canadian parliamentary system it is unclear how much difference organization competition would have made.

American local governments combine intervention by individual units, and often by subunits, with many representational organizations at both state and national capitols. State leagues of cities and, in a few instances, of counties have existed since the late nineteenth and early twentieth centuries. Today they exist in forty-nine states.[31] By 1930 there were state leagues in twenty-four states. During the 1930s, the decade of the Great Depression and the New Deal, twelve additional state leagues were organized, bringing the total number of organized states to 72 percent of the current fifty states. The American Municipal Association (predecessor of the National League of Cities) was organized first as an association of state leagues.

Forty-eight statewide organizations of counties exist in forty-six states. There are two such organizations in Washington and Wyoming and none in Connecticut and Rhode Island (where there are no county governments), Vermont (where counties are weak) and Kentucky. Over half of the state county associations have been created since World War II. A strong national association did not develop before 1957 when the National Association of County Officials was reorganized into the National Association of Counties under a full-time executive director and staff.[32] It is now an equal partner among the national associations of states and cities, largely due to the leadership of its executive director, Bernard F. Hillenbrand. Similarly crucial roles were played by Paul Betters for the United States Conference of Mayors, Patrick Healy for the National League of Cities, Mark E. Keane for the International City Management Association, Frank Bane and Brevard Crifield for the Council of State Governments, and James Martin for the National Governors Conference.

Federal-local relations in both Canada and the United States, in plentiful but varying degrees in the United States and almost nonexistent in Canada, are heavily dependent upon both state/provincial-local and national-state/provincial relationships. As Deil Wright puts it:

> State governments are in the middle of a three-player game of political 'tag.' Being between local units and the national government, they are forever, 'it.' They are intermediate politically, fiscally, and administratively. And as [York Willbern] has contended, "Decisions made at the two ends . . . are more significant than those made in the middle."([33]) The states have some kind of role and some influence, however indirect, in almost all governmental activities. But there are relatively few issues in contemeporary affairs for which states have exclusive responsibility unfettered by formal national constraints or *potent local pressures*. (emphasis added)[34]

If in the United States the role of the states is intermediate, in Canada the provinces are central to the authority, administration and financing of local government. Provincial authority cannot be delegated to local government or to the national government.[35] The national government may create its own local *ad hoc* bodies. This has been done with respect to harbours. According to the Macdonald

Commission, "Federal Port Authorities, established under federal legislation, are providing local administration in a manner that appears to be considerably more sensitive than that of the previous centralized administration." The Commission recommended that local federal authorities be set up to manage federal land "in a manner more sensitive both to local preferences and to local market opportunities" and also local federal airport authorities which "might considerably improve sensitivity to local conditions, provide a more effective air-transport service, and improve service to air travellers."[36]

The only alternative, since the Federal government cannot delegate its authority to local governments, is routing through provincial governments. The Macdonald commissioners thought that provincial governments might "be just as far removed from local concerns as the federal authorities." But the constitutional and political fact is that the only way the federal government can deal with local government is through the provinces. We have already seen how different the role of state governments is in the United States.

The states, therefore, have had to resort to the same intergovernmental tactics as those used with different degrees of success by local governments. In the United States there is no institutional procedure or tribunal in which the President and the Governors regularly debate and decide on federal, state, interstate or local policies to be enacted by their respective legislative bodies. The reason is simple: neither Presidents nor Governors can commit their respective legislatures to accept their decisions. Therefore, the elaborate, and since Meech Lake constitutionally entrenched, Canadian system of intergovernmental diplomacy is unknown in the United States.

The National Governors Association and other organizations of state officials are now very active in Washington where a Hall of States has been built to house them and other public interest groups.[37] It is well funded with adequate staff and, as led by James Martin, is lobbying astutely in conjunction with and often against local government lobbyists. This new stance is interesting because for over fifty years, from 1908 when they were first convened by President Theodore Roosevelt to assist him in his conservation campaign and 1910 when they began to meet annually, until 1963 they showed little interest in federal policies. By the time they became a recognized lobbying force in Washington, local governments had established a firm relationship with Congress and the executive branch. As Haider points out:

> Unsuccessful though they proved to be until the passage of revenue sharing in 1972 [and two-thirds of revenue sharing funds went directly to local governments], they were aimed at separating governmental functions and taxable sources by government levels.[38]

The oldest staff-supported association of states is the Council of State Governments, with headquarters in Frankfort, Kentucky, regional offices in Atlanta, Chicago, New York city, and San Francisco and an Intergovernmental Affairs Office in Washington, D.C. The Council is essentially a research, training, and information service to state governments. It has over thirty-five affiliated and cooperating organizations. The affiliated organizations listed in Table 2 are actively engaged in federal lobbying. The cooperating and adjunct organizations, although not as active in lobbying, illustrate the extent to which state agencies, specialists and technicians are nationally organized. There are local and federal members of many of these specialized associations—thus providing another conduit among federal, state and local governments.

To take the single question of how many grant-in-aid programs are directed to local governments, and how many go to them by statutory requirements of a state-pass-through as an index of the constitutional and political status of local government in the American federal system, we see that each subnational level of government has lost some and won other battles. Public opinion, macro-economic conditions, presidential leadership, as well as the lobbying efforts of state and local governments, are irregularly cyclical in their salience. The expansion of federal, as well as of state and local domestic programs and expenditures of the 1960s and early 1970s has been replaced with decline (but not a precipitous one) in the late 1970s and 1980s of the role of the federal government. President Reagan's New Federalism has not been joyfully embraced and to a large extent not embraced at all. There is no doubt, however, that he has led us into a new phase of the welfare state, which along with fiscal and trade deficits, has slowed and will continue to slow down federal grants for domestic programs. He has not succeeded in getting Congress, dominated by the Democrats, to enact New Federalism into law. What the next presidency, along with its two to four sessions of Congress, will do to the process of intergovernmental relations and to the mix of domestic programs, no one knows.

TABLE 2.
COUNCIL OF STATE GOVERNMENTS LIST OF ASSOCIATED ORGANIZATIONS, 1987[39]

AFFILIATED ORGANIZATIONS

Conference of Chief Justices
Conference of State Court Administrators
National Association of Attorneys General
National Association of Secretaries of State
National Association of State Auditors, Comptrollers and Treasurers
National Association of State Purchasing Officials
National Conference of Lieutenant Governors
National Conference of State General Services Officers
National Conference of State Legislatures

COOPERATING ORGANIZATIONS

Adjutants General Association of the United States
Association of Juvenile Compact Administrators
Association of State and Interstate Water Pollution Control Administrators
Association of State Correctional Administrators
Coastal States Organization
Conference of State Sanitary Engineers
Council of State Administrators of Vocational Rehabilitation
Federation of Tax Administrators
Interstate Conference on Water Problems
National Association for State Information Systems
National Association of Extradition Officials
National Association of Regulatory Utility Commissioners
National Association of State Boating Law Administrators
National Association of State Comptrollers
National Association of State Departments of Agriculture
National Association of State Foresters
National Association of State Juvenile Delinquency Program Administrators
National Association of State Land Reclamationists
National Association of State Mental Health Program Directors
National Association of State Personnel Executives
National Association of State Treasurers
National Association of State Units on Aging
National Association of Tax Administrators
National Clearinghouse on Licensure, Enforcement and Regulation
National Conference of Commissioners on Uniform State Laws
National Conference of States on Building Codes and Standards
National Criminal Justice Association
National Emergency Management Association
National Reciprocal and Family Support Association
National State Auditors Association
Ohio River Basin Commission
Parole and Probation Compact Administrators' Association

ADJUNCT ORGANIZATIONS

Association of State Dam Safety Officials
Council on Government Ethics Laws
National Association of Government Archives and Records Administrators
National Association of State Agencies for Surplus Property
National Association of State Controlled Substances Authorities
National Association of State Emergency Medical Services Directors
National Association of State Telecommunications Directors
National Association of State Training and Development Directors

RELATED COMMITTEES

Committee on Intergovernmental Affairs
Committee on State Innovations
Committee on Suggested State Legislation

However, during the Reagan presidency many categorical grants have been consolidated into eleven block grants to states and two (capital and operating assistance for mass transportation and community development) directly to local governments. General revenue sharing has come and gone—a victim of the budget deficit. The number of categorical grants increased by 17 percent between 1975 and 1978, decreased by 23 percent in the last two years of the Carter presidency and Reagan's first term, but has increased between 1984 and 1987 by 26 percent. The percentage of categorical grants to states alone gradually increased between 1975 and 1987 from 36.4 to 39.3 percent. Local governments are the only recipients of 3.3 percent—down from 4.5 percent twelve years earlier. However, they are still eligible recipients, specified by federal statutes, for about 60 percent of categorical grant programs (see Table 3).[40]

My limited purposes in this paper are to show how local governments in the United States have established direct relations with the national government and to argue that this would not have been possible under parliamentary federalism. I suppose, because I have grown up in the United States and have earned my living studying and speculating about the interrelations of federal, state and local government in the governance of metropolitan areas, that it is natural for me to prefer our ever changing chaos to the neater federalism to the north. But even some Canadians have sought, unsuccessfully thus far, to involve local governments in institutional face-to-face discussion, if not decision-making, of provincial and federal policies affecting the lives of Canadians in their local communities. The Macdonald Commission has given weak recognition to this concern, but stopped short, because of what they considered to be constitutional and political reality, of suggesting, much less recommending, any major changes.

One reason for preferring tri-level chaos over two-level chaos[41] is that it multiplies the possible configurations of relationships (Figure C). There are many times when the results have been beneficial because the feds and locals have ganged up on the states, or the states and locals against the feds, or the feds and the states against the locals.

There are many enviable features of Canadian government. I will mention only one, namely, the institutionalized conferences of first ministers, or portfolio ministers, and bureaucrats. Such meetings in Canada are numbered in the hundreds. In the United States there is nothing comparable (except regional councils of governments at the

TABLE 3.

ELIGIBLE RECIPIENTS, FEDERAL GRANTS IN AID*

	Number of grants				& distribution of categorical grants			
	1975	1978	1984	1987	1975	1978	1984	1987
General Revenue Sharing								
States			1					
Local governments			1					
Block Grants								
States			10	11				
Local governments			2	2				
Categorical Grants								
States only	160	198	154	166	36.3	38.1	38.9	39.3
States & Local units	62	66	40	45	14.1	12.9	10.1	10.7
Local units only	20	37	15	14	4.5	9.2	3.8	3.3
State, localities & public & nonprofit organizations, at option of state agency	198	214	187	197	45.0	41.6	47.3	46.7
Total categorical grants	440	515	396	422	100.0	100.0	100.0	100.0

*Computed from U.S. Advisory Commission on Intergovernmental Relations, *A Catalog of Federal Grant-in-Aid Programs to State and Local Governments* (as funded for Fiscal Years 1975, 1978, 1984 and 1987).

FIGURE C

Possible configurations of Influence and Power

1-A
Tri-Partite Federalism

National	H	H	H	H	H	H	H	H	H
State	H	H	H	M	M	M	L	L	L
Local	H	M	L	H	M	L	H	M	L

National	M	M	M	M	M	M	M	M	M
State	H	H	H	M	M	M	L	L	L
Local	H	M	L	H	M	L	H	M	L

National	L	L	L	L	L	L	L	L	L
State	H	H	H	M	M	M	L	L	L
Local	H	M	L	H	M	L	H	M	L

1-B
Bi-Partite Federalism

National	H	H	H	M	M	M	L	L	L
State	H	M	L	H	M	L	H	M	L

H = High
M = Medium
L = Low

local level). We have yet to devise such a *system* of consultation and it may be impossible to do so with fifty states, over 3,000 counties, over 18,000 municipalities, 17,000 townships, nearly 20,000 school districts and almost 30,000 special districts. But, still, local government has fared well, and our policy-making has fared even better, principally I believe because of opportunities provided by separation-of-powers and lack of party discipline in a Congress of 535 members and of 7,461 state legislators. (The number of state legislators in each state varies from 49 in the unicameral legislature of Nebraska to 424 in New Hampshire.)

The one clear conclusion that both you and I have reached is that I desperately need a Canadian collaborator.

NOTES

1. Michael A. Goldberg and John Mercer, *The Myth of the North American City: Continentalism Challenged*. Vancouver: The University of British Columbia Press, 1986, p.xv.
2. Ibid, p. 253.
3. See the text and citations by Ronald L. Watts, "Divergence and Convergence: Canadian and U.S. Federalism," in Harry N. Scheiber, (ed), *Perspectives on Federalism: Papers from the First Berkeley Seminar on Federalism*. Berkeley: Institute of Governmental Studies, University of California at Berkeley, 1987, pp.179-213; and Thomas J. Anton's comments in the same publication (pp.215-218).
4. Goldberg and Mercer, p.114.
5. *City of Clinton* vs *Cedar Rapids & Missouri River R.R.Co.* (1868), 24 Iowa 455, 475.
6. Warren Magnussen suggests that Subsection 92(8) was merely a restatement of a basic principle, similar to Dillon's rule, underlying the enactment of the Baldwin Act by Upper Canada in 1849. "The arrangements of the Baldwin Act were not particularly innovative: they followed a precedent set in the state of New York that had already been followed in the American Midwest.

   "The Baldwin Act system was based on several principles. The first of these was that the municipal councils were the creatures of the provincial legislature and were subject to its sovereign authority. This was in defiance of the idea, advanced by extreme proponents of local self-government, that the right of the community to govern itself arose directly from the people and could not be abridged or denied by an ostensibly sovereign authority. [Compare the short-lived and distinctly minority position stated by Judge Cooley that municipalities have "an inherent right of local self-government." People ex rel. Le Roy v. Hurlbut (1871) 24 Mich. 44.] The legislature asserted instead that the municipalities were its own creation and could be altered or abolished at will; thus a community that was recognized as a municipality one day could be denied that status the next. Local constitutions were to depend not on local decision, but on provincial legislation. The powers of the municipal councils were strictly defined by the provincial legislature and strictly interpreted by the courts, in accordance with regulations developed and applied by the legislature and its executive or administrative agents. It was not until the twentieth century that the provinces subjected the municipalities to close administrative control, but the principle of provincial supremacy was firmly established, even in the 'charter of municipal freedom'." Warren Magnusson, "Introduction," in Magnusson and Sancton, (eds), *City Politics in Canada*, Toronto: University of Toronto Press, 1983, pp.6-7.

7. William Seagle. "Family Law," *Encyclopedia of the Social Sciences*, (New York, Macmillan, 1931) Vol.6, p.82.
8. *Garcia* vs *San Antonio Transit Authority*, 105 Sup.Ct. 1005 (1985). The court overruled a decision nine years earlier that Congress lacked the constitutional authority to require states and their subdivisions to observe the minimum wage and overtime provisions of the Fair Labour Standards Act "in areas of traditional governmental functions." *National League of Cities* vs *Usery* [Secretary of Labor], 426 U.S. 833 (1976). See U.S. Advisory Commission on Intergovernmental Relations (ACIR), *Reflections on Garcia and Its Implications for Federalism* (M- 147,February, 1986). See also the ACIR report on *State and Local Pension Systems: Federal Regulatory Issues* (A-71, December 1980).
9. In order to avoid the fate of Senator Biden, I admit that I have drawn words, phrases, paragraphs and thoughts freely, without consultation with my co-authors, from Victor Jones, David Magelby and Stanley Scott, *State-Local Relations in California*, Berkeley: Institute of Governmental Studies, University of California at Berkeley, Working Paper 16, October 1975.
10. This does not, of course, invalidate Melvin Webber's thesis that the local community has been replaced by ultra-local networks, often international in scope. However, most individuals in multi-national corporations and universalistic professions still live in a place. We need to understand the relationship between place and universes of all types. See Webber's essay in Melvin M. Webber and others, *Explorations into Urban Structure*, Philadelphia, University of Pennsylvania Press, 1964.
11. David Hoffman, "Interacting with Government: The General Public and Interest groups," in Donald C. MacDonald, *Government and Politics of Ontario*, Toronto: Van Nostrand Reinhold, 1975, p.286. See Susan J. Briggs, "The Community Planning Association of Canada—a Pressure Group," Kingston: Queen's University, Department of Political and Economic Science, 1964, pp.31, 43, 98. See also pp.107-198 for the early relationship between the CPAC and the Central (now Canada) Mortgage and Housing Corporation.
12. Timothy J. Colton, *Big Daddy: Frederick G. Gardiner and the building of Metropolitan Toronto*, Toronto: University of Toronto Press, 1980, pp.20, 27-39, 72, 130-132, 182; *The Canadian Encyclopedia*, Edmonton: Hurtig Publishers, 1985, p.719.
13. Henry J. Jacek, "Central Planning *versus* Conflicting Local Elites:

Regional Government in Hamilton-Wentworth," in Donald C. MacDonald, (ed), *Government and Politics of Ontario* (1975), p.52.

14. Ibid., p.54.
15. Lionel D. Feldman and Katherine A. Graham, *Bargaining for Cities: Municipalities and Intergovernmental Relations—an Assessment*, Montreal: Institute for Research on Public Policy, 1979, p.87.
16. *Oakland Tribune*, December 23, 1987.
17. *San Francisco Chronicle*, December 23, 1987. The amendment which prohibits the nine-county Metropolitan Transportation Commission from approving the use of *state* [?] or federal funds for extensions outside the three-county BART District without the approval of local members of Congress appears to be similar to the Legislative veto of administrative action held unconstitutional in *Immigration & Naturalization Service* vs *Chada*, 462 U.S. 919 (1983).
18. "All election changes in covered jurisdictions . . . (states and localities which have had a history of employing discriminatory tests, devices or practices in voting . . . are subject to preclearance). The covered jurisdictions include the entire states of Alaska, Alabama, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia. Particular counties and towns are covered by special provisions in the states of Connecticut, California, Colorado, Florida, Hawaii, Idaho, Massachusetts, Michigan, New Hampshire, New York, North Carolina, South Dakota and Wyoming." Charles L. Cotrell, "Introduction" in Cotrell, (ed), *Assessing the Effects of the U.S. Voting Rights Act* in *Publius: The Journal of Federalism* (Fall, 1986), pp.7-8. See the entire issue, especially Robert D.Thomas and Richard W. Murray, "Applying the Voting Rights Act in Houston: Federal Intervention or Local Political Determination," pp.81-96.
19. Cotrell, p.10-11.
20. United States Constitution, Fifteenth Amendment (1970).
21. For 13 years the Federal District Court in Boston has required the School Committee to use a specific formula for assigning black and white students to particular schools. "One of the judge's orders established the quota system to achieve racial balance, which led to busing of students and a series of violent instances. Another order required 'perpetual adherence' to racial formulas in assigning students to schools." See *New York Times*, September 30, 1987.
22. U.S. Advisory Commission on Intergovernmental Relations, *An Agenda for American Federalism: Restoring Confidence and Competence*, (June, 1981), p.22.
23. Thomas J. Madden, "The Law of Federal Grants," in U.C. Advisory

Commission on Intergovernmental Relations, *Awakening the Slumbering Giant: Intergovernmental Relations and Federal Grant Law*, (December, 198?), p.10.

24. The best description of the American variant of large organizational complexity along with an extensive review of the literature on intergovernmental relations is by Deil S.Wright, *Understanding Intergovernmental Relations*, (2nd edition, Monterey, California: Brooks/Cole Publishing), 1982.
25. Many departments of state governments are headed by officials elected by the same statewide constituency as the governor and many local agencies are wholly or partially independent under the constitution, statutes or local charters of the mayor and city council.
26. Wright, *Understanding*, p.225.
27. *Congressional Quarterly Almanac* (annual), 1975-1986.
28. Feldman and Graham, *Bargaining for Cities*, p.126.
29. Colton's description of Frederick Gardiner's effort to deal directly with the federal government is enlightening and, as with most of Gardiner's activities, intriguing. See *Big Daddy*, pp.132-136. Especially interesting are his unsuccessful efforts to deal with Prime Minister Diefenbaker (with a record of hostility between them in the Conservative party) despite the fact that all nineteen of the Toronto and suburban ridings were captured by the Tories in 1958.
30. See National League of Cities, *National League of Cities and United States Conference of Mayors: A Staff Paper Describing their History, Activities and Relationships*, (January 25, 1967), used in an unsuccessful attempt to merge the two associations. The most detailed and analytical discussion of their activities and relationships during the 60s and early 70s will be found in Suzanne Farkas, *Urban Lobbying: Mayors in the Federal Arena*, (1971); and Donald H. Haider, *When Governments Come to Washington: Governors, Mayors, and Intergovernmental Lobbying*, New York: Free Press, 1974. See also Mark I. Gelfand, *A Nation of Cities: The Federal Government in Urban America, 1933-1965* New York: Oxford University Press, 1975.
31. Hawaii with only two incorporated municipalities has no state municipal league; in Pennsylvania there are two state associations, one of boroughs and the other of cities.
32. "Like the United States Conference of Mayors, the National Association of Counties (NACO) began as an organization during the Depression. Its original policies and programs were organized around public works and public welfare programs [primary New Deal concerns], its membership overlapping with the Chicago-based American Public Works Society and American Public Welfare Association. NACO was a Washington interest group in name only. Between 1936 and 1957 it remained a

sleepy rural-county, paper head organization run on a part-time basis by two Washington lawyers. It had an $18,000-a-year budget based on $6 annual dues paid by 3,000 individual county officials.'' Haider, *When Governments Come to Washington*, p.32.

33. York Willbern, ''The States as Components in an Areal Division of Powers,'' in Arthur Maass (ed), *Area and Power: A Theory of Local Government*. (Glencoe Illinois: Free Press, 1959), p.82.
34. Wright, *Understanding*, p.238.
35. Royal Commission on the Economic Union and Prospects for Canada, *Report*, (1985), Vol.3, p.373.
36. Ibid, p.379. In 1983 the federal government attempted to make direct funding available to local governments to support local job-creating projects. In Quebec, at least, I watched with fascination as the Levesque government introduced a bill to punish any municipality accepting such funds with the complete withdrawal of *all* provincial support. Finally a federal-provincial agreement was reached to route such funds through the province.
37. ''Within shouting distance of the U.S. Capitol in Washington, D.C., stands a marble edifice labelled the Hall of the States. Between 1976, when the National Governors Association moved in and 1981, the group gradually leased more than three acres of floor space, subletting sixty offices to the representatives of governors, state legislatures, and associations of state bureaucrats. A block west is the new $12 million headquarters of the National Association of Counties (NACO). NACO moved its lobbyists, researchers, newsletter and several affiliates there in March 1982 from rented offices downtown. Less than a mile away, the National League of Cities also has a new office complex, housing league staffers, lobbyists for many individual cities, and several allied organizations. The league's sister group, the U.S. Conference of Mayors occupies suites in a nearby building.'' Congressional Quarterly, Inc. *The Washington Lobby*, (Washington D.C.: 4th edition), 1982, p.99.
38. Haider, *When Governments Come to Washington*, p.21. Orientation toward functional reallocation of authority between the national and state governments is to be found in many reports of the U.S. Advisory Commission on Intergovernmental Relations.
39. Council on State Governments, *The Book of the States*, (Lexington, Kentucky: Council of State Government, Vol.26, 1986- 87), pp.457-458.
40. U.S. Advisory Commission on Intergovernmental Relations, *A Catalog of Federal Grant-in-Aid Programs to State and Local Governments* (as funded for Fiscal years 1975, 1978, 1984, 1987).
41. Canadians are constantly complaining that their system produces acrimony and conflict instead of harmonious debate and consensus.

APPENDIX A

GOVERNMENTAL LOBBY REGISTRATIONS WITH U.S. GOVERNMENT
1974-1985
(as reported annually in *Congressional Quarterly Almanac*)

1974
- National Association of State Foresters
- State of Louisiana, Department of Conservation
- National Education Association
- Board of Commissioners, Wayne County, Michigan
- Metro Sanitation District of Greater Chicago
- O & C Counties Association (Roseberg, Oregon)
- Government of the Virgin Islands of the United States

1975
- American Public Transit Association
- City of Detroit
- Denver Board of Water Commissioners
- Minneapolis City Council
- Tampa Port Authority
- Port of Seattle
- Commonwealth of Puerto Rico
- Association of Texas Soil and Water Conservation Commissioners
- Louisiana Educational Television Authority
- New York State Urban Development Corporation
- San Saba-Brady Soil and Water Conservation District #214, Texas
- County of Baltimore (Maryland)
- Port of Oakland (California)

1976
- National Association of State Lotteries
- State of Illinois Department of Transportation
- Denver Water Department
- City of Anaheim, California
- City of Riverside, California
- Board of Water Commissioners, Denver
- Fort Pierce Utilities Authority (Florida)
- Gainsville-Alachua County Regional Electric, Water and Sewer Utilities (Florida)
- Sebring Utilities Commission (Florida)
- City of Homestead (Florida)
- City of Kissimee (Florida)
- City of Lakeland (Florida)

- City of Starke (Florida)
- City of Tallahassee (Florida)
- Hillsborough County Aviation Authority (Florida)
- Toledo-Lucas County Port Authority (Ohio)
- Port of Oakland (California)
- North California Power Agency
- Richmond Power and Light of the City of Richmond (Virginia)
- Town of Reading (Massachusetts)

1977
- Hennepin County (Minnesota)
- State of Illinois
- Northern California Power Agency (California)
- City of Anaheim (California)
- City of Azusa (California)
- City of Banning (California)
- City of Colton (California)
- Electracities of North Carolina
- Contra Costa County Water Agency (California)
- State of Maine
- Ohio Board of Regents
- Board of Public Affairs, Bowling Green, Ohio
- City of Riverside (California)
- Light and Water Department, Sebewang, Michigan
- Municipal Utilities, Croswell, Michigan
- New Smyrna Beach Utilities Commission (Florida)
- Public Works Department, Clinton, Michigan
- City of Los Angeles (California)
- Westlands Water District (California)
- East Bay Regional Park District (California)
- Fort Pierce Utilities Authority (Florida)
- Legislature of the Virgin Islands
- Northern California Power Agency
- State of Illinois

1978
- State of Louisiana
- Port of Oakland (California)
- State of Hawaii
- City of Birmingham (Alabama)
- Puerto Rico Mayors Associations
- State of Oregon
- South Slope Borough (Alaska)
- State of Alaska

- Rockingham Township Supervisor (Pennsylvania)
- Commonwealth of Puerto Rico
- The Metropolitan District (Hartford, Connecticut)
- City of Bridgeport (Connecticut)
- City of Camden (New Jersey)
- Gloucester County (New Jersey)
- City of Detroit (Michigan)
- City of Kansas City (Missouri)
- City of Pontiac (Michigan)
- State Troopers Fraternal Association of New Jersey, Inc.
- City of Northglen (Colorado)
- State of Alaska
- Huron Clinton Metropolitan Authority (Michigan)
- Central Lincoln People's Utility Trust (Washington)
- Pitkin County-City of Aspen (Colorado)

1979
- State of Alaska
- State of Washington
- American Falls Reservoir District (Idaho)
- City of Virginia Beach (Virginia)
- Garrison Diversion Conservancy District (North Dakota)
- State of California
- City of Philadelphia (Pennsylvania)
- Alaska Housing Finance Corporation (Alaska)
- Idaho Housing Agency (Idaho)
- Jacksonville Transportation Authority (Florida)
- City of Baltimore (Maryland)
- City of Juneau (Alaska)
- Michigan State Housing Development Authority (Michigan)
- State of New Mexico
- City of Houston (Texas)
- Modesto Irrigation District (California)
- New York State Development Authority (New York)
- Oregon Department of Transportation (Oregon)
- Turlock Irrigation District (California)
- Belle Fourche Irrigation District (South Dakota)
- Puratoire River Water Conservation District (Colorado)
- Regional Transportation Authority, Chicago (Illinois)
- Housing Authority of the City of Seattle (Washington)
- Mayor and City Council of Seattle (Washington)

1980
- City of Houston (Texas)

- State of Alaska
- Central Lincoln People's Utility District (Oregon)
- Michigan Job Development Authority (Michigan)
- Birmingham City (Alaska)
- City of Compton (California)
- Council of State Housing Agencies
- Commonwealth of Puerto Rico
- Virginia State University
- City of Philadelphia (Pennsylvania)
- Municipality of Anchorage (Alaska)
- Pennsylvania Education Association (Pennsylvania)
- Puerto Rico Federal Affairs Administration (Puerto Rico)
- Washington Department of Ecology (Washington)
- Boise Development Agency (Idaho)
- Colorado Counties, Inc.
- Allegheny County Commission (Pennsylvania)
- City of Kansas City (Missouri)
- Nueces County Navigation District (Texas)
- Metropolitan Transit Authority of Harris County (Texas)
- New Mexico Taxation and Revenue Department
- Rio Grande Water Conservancy District (Colorado)
- City of Tucson (Arizona)
- State of Wyoming
- State of South Dakota, Department of Transportation
- New York Public Library
- City of Birmingham (Alabama)
- Town of Dune Acres (Indiana)

1981
- City of South Lake Tahoe (California)
- Metropolitan Service District (Oregon)
- Tri-County Metropolitan Transportation Authority (Oregon)
- State of Oregon
- City of Portland (Oregon)
- Metropolitan District Commission (Connecticut)
- Canaveral Port Authority (Florida)
- City of Gardena (California)
- City of Philadelphia (Pennsylvania)
- City and County of San Francisco (California)
- Dayton-Montgomery County Park District (Ohio)
- Eugene Water and Electric Board (Oregon)
- Los Angeles Community Development Agency (California)
- Belle Fourche Irrigation District (South Dakota)

- Commonwealth of Puerto Rico
- Suffolk County (New York)
- District of Columbia, Department of Transportation
- Mahoning Valley Economic Development Corporation (Ohio)
- New York State Department of Transportation (New York)
- New York State Mortgage Loan Enforcement & Administration Corporation (New York)
- New York State Urban Development Corporation (New York)
- City of Miami (Florida)
- City of Painsville (Ohio)
- Dade County (Florida)
- Erie County Industrial Development Agency (New York)
- State of California, Office of Comptroller
- Alaska Industrial Development Authority
- Council of State Housing Agencies
- Dade County Aviation Department (Florida)
- Delaware River Port Authority (Pennsylvania)
- National Association of State Agencies for Food Distribution
- North Texas Municipal Water District (Texas)
- Pennsylvania Association of Industrial Development Authorities
- Power Authority of the State of New York
- Massachusetts Bay Transit Authority
- State of Montana
- City of Kansas City (Missouri)
- Miami Conservancy District (Ohio)
- Senate of Puerto Rico
- Brazos River Authority (Texas)
- Flathead Joint Board of Control (Montana)

1982
- Alaska State Senate Transportation Committee
- Bay Area Rapid Transit District (California)
- Canaveral Port Authority (Florida)
- City of Miami (Florida)
- Council of State Housing Agencies
- Dade County (Florida)
- Metropolitan Atlanta Rapid Transit Authority (Georgia)
- Oakland County Department of Public Works (Michigan)
- State of North Dakota
- State of Alaska
- Delaware River Port Authority (Pennsylvania)
- Philadelphia Port Corporation (Pennsylvania)

- Toledo-Lucas County Port Authority (Ohio)
- Santa Ana River Flood Protection Agency (California)
- State of Montana
- State of Washington
- Adams County (Colorado)
- Seneca County (New York)
- Town of Mashpee (Massachusetts)
- Metropolitan Transit Authority (New York)
- Puerto Rico Federal Affairs Administration
- Central States Southeast and Southwest Areas Health and Welfare and Pension Funds
- Council of State Hospital Finance Authorities
- Guadalupe Blanco River Authority (Texas)
- Montgomery County Industrial Development Authority (Texas)
- Office of States Washington Representative to Appalachian Regional Commission
- Ohio Association of Community Action Agencies
- Papillion School District (Nebraska)
- Puerto Rico House of Representatives (Puerto Rico)
- City of Tucson (Arizona)
- West Virginia Industrial Development Association
- Government of the Virgin Islands
- State of Louisiana
- City of Baton Rouge (Louisiana)
- City of Minneapolis (Minnesota)
- Commonwealth of Puerto Rico
- Massachusetts Bay Transportation Authority
- Metropolitan Transportation Authority (New York)
- Minneapolis Community Development Agency (Minnesota)
- Northern Colorado Water Conservancy District (Colorado)
- Port of Wilmington (Delaware)
- South Jersey Port Corporation (New Jersey)
- Broward County (Florida)
- City of Akron (Ohio)
- Municipal Subdistrict, North Colorado Water Conservancy District
- Oakland Coliseum (California)
- Port of Tacoma (Washington)
- Galveston Wharves of the City of Galveston (Texas)

- Regional Transportation Authority (Illinois)
- City of Camden (New Jersey)

1983
- City of Austin (Texas)
- City of Dallas (Texas)
- City of Houston (Texas)
- City of San Antonio (Texas)
- Mayor of Kansas City (Missouri)
- State of Delaware
- State of Iowa
- State of Louisiana
- State of North Dakota
- State of Rhode Island
- Commonwealth of Puerto Rico
- Kansas Corporation Commission
- University of Alabama Health Services Foundation
- Cambridge Redevelopment Authority (Massachusetts)
- City of El Paso (Texas)
- Suffolk County (New York)
- North Central Nebraska Reclamation District (Nebraska)
- State of Oregon
- Bi-County Consortium (Michigan)
- City of Lakewood (California)
- City of St Louis (Missouri)
- Los Angeles Rapid Transit District (California)
- Puerto Rico Maritime Shipping Authority (Puerto Rico)
- State of Alaska
- City of Cincinnati (Ohio)
- City of Scottsdale (Arizona)
- Intergovernmental Cable Communication Authority of Oakland County (Michigan)
- National Conference of Black Mayors
- New York Power Authority (New York)
- Western Governors Policy Office
- City of Detroit (Michigan)
- New Mexico Public Service Commission (New Mexico)
- Orange County Transit District (California)
- San Francisco Public Utilities Commission (California)
- Southern California Rapid Transit District (California)

- State of Nevada
- Miami Conservancy District (Ohio)
- Cities for Responsible Cable Policy
- South Carolina Public Service Authority (South Carolina)
- Garrison Diversion Conservancy District (North Dakota)
- City of Anaheim (California)
- Municipality of Anchorage (Alaska)
- City of Azusa (California)
- City of Banning (California)
- California State Lands Commission
- Chicago Board of Education (Illinois)
- City of Colton (California)
- Massachusetts Port Authority
- Northern California Power Agency
- City of Riverside (California)
- Sacramento Public Utility District (California)
- City of St. Petersburg (Florida)
- City of Santa Clara (California)
- Clavey-Wards Ferry Project (California)
- Turlock Irrigation District (California)
- Modesto Irrigation District (California
- Commissioner of Public Lands for State of New Mexico
- City of Whittier (California)

1984
- City of Miami (Florida)
- City of New York (New York)
- Commissioner of Public Lands for the State of New Mexico
- University of Michigan Hospitals
- Commonwealth of Puerto Rico
- Port of Tacoma (Washington)
- Southern California Rapid Transit District (California)
- Chelan (No.1) Public Utility District (Washington)
- Douglas (No.1) Public Utility District (Washington)
- East Bay Regional Park District (California)
- Grant (No.2) Public Utility District (Washington)
- Bartholomew County Hospital (Indiana)
- City of Rochester (Minnesota)
- City of Saint George (Alaska)
- City of St. Louis (Missouri)

- City of Starke (Florida)
- State of Michigan
- Broward County (Florida)
- Delaware Economic Development Authority
- Jacksonville Transportation Authority (Florida)
- Metropolitan Transportation Authority (New York)
- Redevelopment Agency of the City of Burbank (California)
- State of Nevada Nuclear Waste Project Office
- State of South Carolina Budget and Control Board
- Turlock Irrigation District (California)
- California State University at Long Beach
- State of Utah
- Mayors Committee (Baltimore) to Restore NFL Football
- Western Governors Association
- Bay Area Rapid Transit District (California)
- City of Anaheim (California)
- City of Banning (California)
- City of Colton (California)
- City of New Brighton (Minnesota)
- City of Riverside (California)
- City of Santa Clara (California)
- Northern California Power Agency
- Orange County Water District (California)
- Puerto Rico Federal Affairs Administration
- Florida State University Graduate Studies and Research
- Arizona Power Authority
- Modesto Irrigation District (California)
- City of Norfolk (Virginia)
- Spokane County (Washington)
- Association of Local Housing Finance Agencies
- Wayne County Board of Commissioners (Michigan)
- Massachusetts Bay Transportation Authority
- Milwaukee County Intergovernmental Relations
- South Carolina Public Service Authority
- State of Idaho, Department of Employment
- Washington Metropolitan Area Transit Authority (D.C.)
- Wisconsin Counties Association

1985
- City of Hattiesburg (Mississippi)
- Western Governors Association
- South Carolina State Budget and Control Board
- Dade County International Airport (Florida)
- City of Dillingham (Alaska)
- New York State Housing Finance Agency
- Seattle Metro (Washington)
- Illinois Department of Energy and Natural Resources
- Los Angeles County (California)
- Grant Count Public Utility District (Washington)
- Savannah-Chatham County Board of Education (Georgia)
- Oklahoma State University
- City of Avalon (California)
- Burbank-Glendale-Pasadena Airport Authority (California)
- Chicago City Colleges (Illinois)
- Chicago Rapid Transit Authority (Illinois)
- Illinois Environmental Protection Agency
- State of Maryland
- City of New Orleans (Louisiana)
- Orange County Sanitation Districts (California)
- Purgatoire River Water Conservancy District (Colorado)
- City of Anaheim (California)
- City of Azusa Electric Utility Department (California)
- City of Baldwin Park (California
- City of Banning Electric Department (California)
- Colorado State Department of Highways
- City of Colton Electric Department (California)
- Imperial Irrigation District (California)
- City of Inglewood (California)
- Michigan Department of Transportation
- Northwern California Power Agency
- City of Oceanside (California)
- Oceanside Redevelopment Agency (California)
- City of Provo (Utah)
- City of Redondo Beach (California)
- City of Riverside Utility District (California)
- Sacramento Municipal Utility District (California)

- City of Santa Clara (California)
- City of Salt Lake (Utah)
- Appalachian Regional Commission
- State of Nevada
- City of Philadelphia (Pennsylvania)
- State of Washington
- Massport/Commonwealth of Massachusetts
- Napa County (California)
- New York State Comptroller
- New York State Power Commission
- Commonwealth of Puerto Rico
- Turlock Irrigation District (California)
- City of Los Angeles Community Development Agency (California)

LOCAL-FEDERAL GOVERNMENT RELATIONS: CANADIAN PERSPECTIVES, AMERICAN COMPARISONS.
A VIEW THROUGH A KALEIDOSCOPE

Patrick J. Smith

If Mackenzie King was correct in his conclusion that Canada suffered from too much geography, one by-product of that diversity—and of related social, political, economic and other divisions—has been the need to establish an extensive array of intergovernmental relation mechanisms to provide for the governing of the Canadian federation.

For Ed Black, much of this diversity is premised on vastly differing conceptions of the federation itself.[1] The lack of Canadian resolution between the American federal variants of states rights versus centralized power, together with early judicial interpretation of the Canadian Constitution (particularly by The Judicial Committee of the Privy Council)[2] helped foster a climate conducive to extensive, administrative or co-operative federalism. The development of the attendant forms for this class of federalism was essentially *ad hoc*, according to Ron Burns;[3] and certainly, to a considerable degree, it has been informal. Richard Simeon, amongst others, has reminded students of Canadian federalism that despite the panoply of arrangements, (and often, *because* of them) intergovernmental diplomacy has been essential to governing in Canada.[4]

Most of this diplomacy has been federal-provincial; and certainly that was understandable in the post Confederation period when the country was 80 percent rural. Increasingly, however, the need to recognize local governing forms has come to the fore. With a population now three-quarters urban (and most of that major metropolitan), the relative exclusion of municipal/regional considerations is no longer appropriate. Simply stated, such issues have been pushed onto senior governmental agendas.

This paper offers a comment on the nature of local-senior government relations in Canada (in particular at the federal level), and a comparison with federal-local relations in the United States. It also includes a speculation—"A View Through a Kaleidoscope"—on the implications of the 1987 Meech Lake-Langevin Accord on Canadian settlements, public policy-making and their governance.

MEECH LAKE AND LOCAL-FEDERAL RELATIONS IN CANADA: A VIEW THROUGH A KALEIDOSCOPE

Peter Russell has reminded observers of the Canadian constitution, that constitutional politics are an unusual kind of politics—"about the most basic features of the fabric and structure of the body politic."[5] And that the 1982 and 1987 reforms have concerned questions of (i) ultimate sovereignty; (ii) fundamental rights; and (iii) the nature of the Canadian political community.[6] What the Constitution Act 1982 failed to do, according to Russell, was to resolve that latter question, and "until we forged a mutually agreeable settlement to *that* (Quebec) issue. . . we Canadians would not have constituted ourselves a people."[7] The designation of the post-1984 constitutional discussions as "the Quebec Round" recognized this fact and omission. Yet despite the achievement of the Meech Lake-Langevin Accord in 1987, the definition of either the Quebec or Canadian political community remains elusive and speculative.

That speculation appears appropriate for several reasons: for example, (a) it seems necessary to be (only) speculative for a Constitution Act 1987 not yet entrenched—and with at least a couple of Provincial Premiers inclined to pose some changes to it—on aboriginal rights, equality provisions, the admission of new provinces, and so on. The outcome of public hearings, particularly in Manitoba, the response of New Brunswick's new (post Accord) McKenna government, and other possible political shifts in the three year ratification process, all make one mindful that those who are inclined to gaze into (constitutional) crystal balls, should be prepared to eat glass.

(b) It is also appropriately speculative, since the Meech Lake-Langevin Accord and what it means for ongoing Canadian constitutional development, has been the subject of considerable discussion and debate. The range of responses has been from "monstrous" to "extraordinary", from "necessary" to representing "constitutional immorality." Certainly, in the context of its possible impact on Canadian

Settlements, it represents a significant, though far from settled, matter.

While significant, the 1987 Constitutional Accord's implication for settlements—whether at the level of provinces (particularly a "distinct" Quebec), or more local governing forms—is significantly speculative. Early discussion and interpretation has suggested that some of the language of the Accord remains "at odds."[8] The reflections of participants in this seminar such as Norm Tarnow from British Columbia (presented in this volume) while entirely informative, did little to dispel the view that large elements of the Accord might be termed "Meech-speak."

It was the same with key language in the Constitution Act 1982: for example, regarding aboriginal rights. The lack of subsequent definitional agreement despite *four* First Minister-Aboriginal Peoples' Conferences between 1982 and 1987, has not seen substantial change in the relationship between aboriginal peoples and their *settlements* and the federal government; and it has left native peoples to settle the issue of local community/band relationship with the feds by judicial versus political means—hardly a harbinger of positive problem solving between the federal government and these local communities. It also supported the contention that the issue of language in constitutions is far from symbolic.

(c) It is speculative in that it represents a clear clash of visions—of definitions of the community—of the federation. Despite differences in interpretation, few have disagreed that the Meech Lake-Langevin Accord represents a decentralization of the Canadian Federation and that it reflects a very different vision of the Canadian political community than that envisaged by Pierre Trudeau. While many see this shift as a not inappropriate response to the federation, it more clearly resembles Trudeau's disdained "community of communities"—or simply "checkerboard federalism."

In the context of Black's musings on the implication of ongoing competing definitions of Canadian federalism, these definitional differences have not been resolved by Meech Lake-Langevin, any more than they were in 1981-82.[9] One of the abiding ironies of Canadian politics has been that provinces which have often argued so strongly (and constitutionally correctly) for limits to federal intrusions into their areas of jurisdiction, have often failed to apply that logic within their own jurisdictions for those third tiers of government which are their creatures—a point underlined by Victor Jones' comments on Canadian local-senior government relations. (See below)

Without raising too fine a point, the example of the current British Columbia agenda of *decentralization* and restructuring at a time when increasing power and policy direction is being concentrated in the Premier's Office,[10] suggests the language of provincial decentralization represents little more than an attempt to divest some responsibilities and administration without accompanying decision-making authority or financing. It may simply represent "the Bogus Choice." There have been other false starts in the tri-level world of intergovernmental relations.

In the context of the seminar theme—From Centre to Periphery—the assumption is made here that the patterns, where they exist, are affected by which end of the kaleidoscope into which one looks. A kaleidoscope is "an instrument which, by means of mirrors, presents bits of coloured glass, viewed through it, in ever changing symmetrical patterns, as the tube is rotated."

From this perspective, the impacts of the Meech Lake-Langevin agreement on Canadian settlements, and on local-federal relations is surely speculative, and certainly asymmetrical: for example, if L'Heureux is correct in his Macdonald Royal Commission study that "the existence of a municipality assumes (apart from a specific geographic region, governed by its residents) powers of a local nature" and "a degree of autonomy which allows the municipality to exercise its powers (even the majority of them) without outside supervision and the financial means (that is, its own sources of revenue) to do so,"[11] then it is possible to conclude that Meech Lake offers little in the way of change to local governing forms in Canada. Though if Victor Jones is correct, as I suspect he is, the solutions do not generally rest in formal constitutional arrangements as much as they do in *ad hoc* diplomacy.

To the extent that local relations with their more significant senior level government—the province—is positive, a more decentralized federalism—one which puts more specific limits on federal intrusions into areas of provincial jurisdiction—may have no effect. To the extent that the federal role may have offered some (no more than that) counter-balance to provincial "abuse" of localities, the Meech Lake-Langevin Accord offers less hope—at least in constitutional terms. If the 1987 Constitutional Accord represents a more checkerboard federalism, we are likely to see an even greater variety of local-senior government relations—though here, as elsewhere, it is not possible to talk of local-senior government relations without including the province—the centre of the local governing universe.

With all of that constitutional speculation, my comments may have succeeded if they have obscured certain false clarities.

LOCAL-FEDERAL GOVERNMENT RELATIONS: CANADIAN PERSPECTIVES, AMERICAN COMPARISONS

It has been entirely possible to write guides to the Canadian municipal system[12] or primers to local government in particular provinces[13] with only passing reference to the federal government. Rowat, for example, sought to explain "all the important aspects of local government in Canada" in the mid-1970s with the province as the centre of the local governing universe. References to federal impacts were not felt necessary. Bish confines the federal role in *Local Government in British Columbia* (1987) to a paragraph describing the rise and fall of the Ministry of State for Urban Affairs. Its failure occurred because the federal Urban Ministry "simply did not fit into the traditional Canadian political and administrative framework and was eventually eliminated."[14] None of this omission would be surprising to Victor Jones. In seeking to answer the question "Why do American local governments play a more active and influential role in intergovernmental relations *and* in the formulation of national and state policies than Canadian municipalities?" Jones seeks to establish the Canadian difference as a product of "parliamentary federalism."[15]

In that conclusion, he is not alone. Stefan Dupre has argued that "the fundamental facts of Canadian constitutionalism are federalism and the cabinet-parliamentary form of government."[16] While Victor Jones notes these two central features, there is some tendency to emphasize the one which distinguishes the Canadian and American Systems, namely parliamentary versus presidential forms. It is arguable that it is more the combination of both parliamentary *and* federal systems which explains much of the differences in local roles in intergovernmental politics in both systems.

Certainly, consitutionally, the omission of significant discussion of federal dimensions in local governance (and vice versa) is understandable. As Jones and others have pointed out, Section 92(8) of the

Constitution Act 1867, gave full responsibility for "Municipal Institutions" to the province.

So, as with Dillon's American dictum, in Canada "the boundaries, functions and institutional forms of municipal government are all derived from, and sanctioned by, the over-riding authority of provincial legislatures. Local authorities can be no more and no less than what is expressly laid down in provincial statutes. . . (Conversely), the provinces have unrestrained power to create, alter and abolish municipalities, and to exercise whatever degree and method of control over municipalities and their actions, as the provincial governments think fit."[17]

Despite the fact that federalist arrangements make local governments "tenants at will" in both systems, significant differences do exist in their respective places in senior level governance. Jones' conclusion that the porousness of the American governmental system supports the feline analogy of Jiggs' Cat regularly re-entering through the system's multiple cracks, "frequently enough to make a systematic difference re: state and national governments" is well established. If local governments in the United States are feline—and therefore intelligent, agile and with nine lives,—in Canada, local governing forms more closely resemble the national symbol—the beaver. Apart from being a rodent (albeit one as large as Jiggs' Cat) their key skills are primarily survival—and when alarmed they slap the water with their tails, warning others to take refuge underwater. Rather than being pejorative, this analogy is entirely supported by circumstance—in the Canadian intergovernmental system, refuge and survival are more meaningful characteristics.

Victor Jones underscores the significance of Judge Dillon's caveat that senior governments have their powers circumscribed by the recognition of the "folly" of overuse and abuse. Yet in the British and Canadian parliamentary systems, recent examples exist where "nuclear options" have been exercised. Margaret Thatcher's abolition of the Greater London and Metropolitan County Councils, and the dismissal of recalcitrant school boards in British Columbia by the provincial government both serve as warnings that the game of policy conflict between local governments and their senior authorities may move the former to a realm beyond the more conventional warfare that is the norm.[18]

In seeking to answer the important question posed by Jones, "when, how and where will state (and senior) governments exercise their will versus their recalcitrant and innovative children?" Swainson has developed what I have termed "the frustration thesis." In discussing provincial-municipal relations in British Columbia, he has argued that there is "growing recognition. . . that each has a considerable capacity to frustrate the other and yet, in the long run, is likely to derive little advantage from this type of behaviour."[19] A corollary would suggest that the incidence and extent of "when, how and where" senior authority would be exercised versus local governments, is substantially correlated with the extent of local frustration of senior intentions.

This centralization-frustration corollary recognizes certain givens:

(a) that institutional/constitutional relationships do affect local-senior governmental relations. Here, clearly, the extra lives of local governing forms in the U.S. is a by-product of institutional differences of power—a feature Victor Jones alerts us to in his assessment; and importantly, Jones reminds students of local government that the power dispersion in the U.S. system occurs across levels, and both between *and within* branches, providing "local governments with the opportunity to dilute Dillon's Rule and to go directly, both individually and collectively to the national government." Richard Neustadt has commented on this in the context of presidential politics and power;[20] and,

(b) that the *power* implicit in such relationships is central in policy conflict/resolution between the local-senior levels of government: to fight in the Canadian intergovernmental system is fraught with significant dangers for local governments: examples abound (including that in Jones' footnote 37) where federal opportunity existed and was even encouraged, only to find significant provincial "checks" on such interaction.

This is not to say that federal activities and spending have not had significant impact on local communities (and their governments). In the mid-1970s when the federal Ministry of State for Urban Affairs was operative, there were "219 federal programs administered by 27 departments, affecting urban development in Canada in a significant way."[21] And despite the demise of the MSUA in 1979—after considerable provincial protest at its intrusive nature vis-à-vis constitutional power divisions—the federal authority and spending influence "has intervened often and extensively in. . . the municipal sphere."[22]

For Hodge and Qadeer the impacts of such federal policies have been indirect (albeit often significant). For example, given the federal role (constitutionally enshrined since 1982) to direct policy on limiting regional disparity, the feds have established significant regional economic development programs (currently reflected in the Western Diversification and Atlantic Canada Opportunities funds). These multi-billion dollar programs have been "sectoral rather than spatial" and "little thought is given to the impact on. . . communities of either the form in which the policy is delivered (grants, projects, services, and so on) or the means of dispersing the policy (for example, the agency)."[23]

This policy world also substantially highlights the nature of local-federal interaction in Canada. Victor Jones contends that not only have US local governments diluted Dillon, but they have also been able to develop "an active and influential role in the formulation of national and state policies." It is arguable that to the extent that local-federal inter-relationships exist in Canada, these are almost entirely one-way: federal-to-local. And despite the fact that the Federation of Canadian Municipalities could claim a "Big Win On Tax Reform" in convincing the federal government to exempt municipalities from the Business Transfer or Value Added Tax provisions in the federal White Paper of June, 1987, this is likely to remain the norm.[24] There are certain *ad hoc* tri-level efforts, such as the movement of hazardous goods in metropolitan areas, where local input is essential and successful. These remain limited as bases for more generalized understanding of the local-federal intergovernmental relationship.

For Victor Jones, what makes these Canada-US differences persist and allow for broader comparisons is the fused authority of the parliamentary system in Canada—what Thomas Hockin refers to as "the collective central energizing executive" (the fusion of executive and legislative institutions through the constitutional conventions of responsible government, and the premise of strong party (and executive dominated) discipline).[25] In such a system, the First Minister and Cabinet represent the "key engine of the State" within both federal *and* provincial levels of government.

The broad recognition of that fact has been ensured by judicial test and cultural courtesy. While in the US metropolitan areas such as the San Francisco Bay Area, national legislative "riders" ensure local benefit, and the need for "local congressional approval", in Canada, jurisdictional lines are substantially observed. MLAs and MPs seldom cross each other's turf—indeed where local controversies swell, they are generally all too willing to inform constituents that the point of resolution (and protest) is elsewhere. Whether culture or constitutional requirements are more telling in explaining such behaviour, remains open; but the result is clear.

In terms of local government pressure on federal policy formulators, the exercise in Canada is so truncated because local authorities do not see their solutions with the federal government for the most part. In this, Jones is certainly correct: the State may be intermediate in the US; in Canada, its provincial counterpart "is central to the authority, administration and financing of local government." (And the Meech Lake-Langevin Accord has not represented *any* change here—except to further enshrine the province as the centre of the local governing universe). What cracks might exist in the federal sphere, are quickly plastered over by provincial governments. Thus, the beaver's survival mode is the operative norm.

What is perhaps most interesting in comparative terms, has been the relative lack of similar plastering efforts by the US State governments. Victor Jones' assessment includes the view that in the last two decades the states may have enjoined the intergovernmental battle in a more significant way—despite (or because of) the fact that about two-thirds of revenue sharing from the federal government went directly to local governments.

So what of the future: Victor Jones is convincing in rejecting the contention of John Griffith that local-senior governmental relations defy categorization: "Any generalization evokes shouts of protest. Every example can be shown in some way to be unrepresentative and ill-chosen."[26] The inter-relationships may be "formal, informal, statutory, non-statutory, legal, extra-legal, financial, official, personal, political, functional, tragical-comical-historical-pastoral",[27] but they certainly can be compared.

In terms of Charter impacts (versus 15th Amendment decisions in the US), the time frame for comparisons may be less than the "several decades" envisaged by Victor Jones. Current cases, for example on provincial apportionment in B.C., may produce judicial supervision of aspects of local/provincial authority; and it may do so in the short term future.

In preferring "three-tiered chaos" to "two-level neater federalism", Victor Jones may be correct in concluding that three level games produce more configurations and less certain outcomes. In that uncertainty, local governments may have more impact. Neatness was not the conclusion of Lord Kilbrandon in his Royal Commission study of the U.K. constitution in 1973, however. In rejecting the federalist option for the United Kingdom, its relative *failure* in Canada was one of his tests.

Jones' other conclusion—that *despite* the vast array of governmental players, local authorities "still have fared well" may overstate the point. It may be—as with the multiple cracks—that it is *because* of the array that opportunity presents itself. If the latter is the case, it would go some way (beyond the persuasiveness of the parliamentary federalist argument) in explaining the relative lack of success of local governments in their national level inter-relationships in Canada. With only a limited number of Canadian local players—for example, there are only 24 Census Metropolitan Areas,[28]—the possibility of agenda overload and local opportunity because of senior attention being diverted significantly elsewhere is greatly limited. For most provinces, their few major metropolitan areas *are* their agendas.

If the comparative intergovernmental differences are more institutionally based in the U.S., constitutional aspects continue to dominate in Canada. If so, we may need to shift our comparative analogy from the elephant and the mouse to the beaver and the cat.

NOTES

1. Ed Black, *Divided Loyalties: Canadian Concepts of Federalism*. Montreal: McGill-Queen's University Press, 1975, particularly pp.14-19.
2. See A.Cairns, "The J.C.P.C. and Its Critics", *Canadian Journal of Political Science*, No.3, Vol.4, September 1971, pp.301-345 for an interesting discussion of this theme—and its competing forms.
3. See Ron Burns, (ed), *One Country or Two?* Montreal: McGill-Queen's University Press, 1971. See also his *Report: Intergovernmental Liaison on Fiscal and Economic Matters*, Kingston: Institute of Intergovernmental Affairs, Queen's University, 1968.
4. See Richard Simeon, *Federal-Provincial Diplomacy: The Making of Recent Policy in Canada*, Toronto: University of Toronto Press, 1972.
5. Peter Russell, "Preface", in L. Cohen, P.J.Smith, and P. Warwick, *The Vision and the Game: Making the Canadian Constitution*, Calgary: Detselig, 1987.

6. Ibid.
7. Ibid.
8. See. P. Smith, "Meech Lake-Langevin and Beyond: Re-Making the Canadian Constitution", KNOW Radio transcript, Vancouver, February 1988.
9. See P. Smith, "Faustus Bidgood and the Kiwanis Club: Making the Canadian Constitution", paper for the Atlantic Provinces Political Studies Association, Halifax, October 1986.
10. See P. Smith, "Policy Paradigms and Policy Shifts: Community Economic Development in British Columbia—Perspectives, Practices and Prospects", paper for the Canadian Urban and Housing Studies Conference, Winnipeg, February 1988, pp.28-34.
11. Jacques L'Heureux, "Municipalities and the Division of Powers" in Richard Simeon (ed), *Intergovernmental Relations*, Toronto: University of Toronto Press, 1985, pp.179-182.
12. See, for example, Donald Rowat, *Your Local Government: A Sketch of the Municipal System in Canada*. Toronto: Macmillan, 1975.
13. For example, Robert Bish, *Local Government in British Columbia*. Victoria: University of Victoria, 1987.
14. Ibid, p.9. For a more complete account of "the life and times" of the Ministry of State for Urban Affairs, see H.Peter Oberlander and A.L.Fallick, (eds), *The Ministry of State for Urban Affairs: A Courageous Experiment in Public Administration*, Vancouver: UBC Centre for Human Settlements, 1988.
15. Victor Jones, "Beavers and Cats: Federal-Local Relations in the United States and Canada" this volume.
16. Stefan Dupre, "Reflections on the Workability of Executive Federalism", in Simeon, *Federal-Provincial Diplomacy*, p.3.
17. Thomas J. Plunkett and George M. Betts, *The Management of Canadian Urban Government*, Kingston: The Institute of Local Government, Queen's University, 1978, p.66.
18. See. P.J. Smith, "Policy Conflicts Between Local and Senior Governments: Canadian, British and American Comparisons", paper for the International Political Science Association XIII World Congress, Paris, France, July 1985. See also Terrence E. Cook, "Putting Power Where Pals Prevail: Institutional Preferences as Rational Choice", paper for the Pacific Northwest Political Science Association, Vancouver, B.C., October 1985. His "Index of Favourability" seeks to link "The Favourability of Unit" (of government) and "Alternative Tactical Manoeuvers." See especially p.35, Figure 1.
19. See Neil Swainson, "Provincial Municipal Relations", in T. Morley, N. Ruff, N. Swainson, J. Wilson, and W. Young, *The Reins of Power:*

Governing British Columbia, Vancouver: Douglas and McIntyre, 1983, p.263.

20. See Richard E. Neustadt, *Presidential Power*. New York: John Wiley, 1960.
21. L'Heureux, p.187.
22. Ibid.
23. Gerald Hodge and Mohammed Qadeer, *Towns and Villages in Canada: The Importance of Being Unimportant*. Toronto: Butterworths, 1983, p.206. See pp.206-210 for a series of examples of this argument.
24. "Big Win on Tax Reform", *F.C.M. Communique*, December 1987. According to F.C.M. President Jean Corbeil, "The municipal world performed beautifully on this issue. We got the facts straight. We organized a national lobby. Municipalities and provincial/territorial municipal associations played a central role. We gained the support of the provinces. We met with the Finance Minister. And we won the first round." See also *F.C.M. Communique*, "Impact of Tax Reform Proposals on Municipal Operations" and "Federal Tax Reforms Will Force Property Tax Increases" August 24, 1987. See also F.C.M. report on "Estimates of the Federal Sales Tax Collected on Municipal Purchases" (Clarkson Gordon, September 1987), "Tax Reform Will Boost Property Taxes", September 28, 1987, and "Tax Reform Proposals Would Impact Municipal Government", November 27, 1987. The gaining of provincial support may have been crucial in the exemption fight with the federal government.
25. Thomas Hockin, *Government in Canada*, Toronto: McGraw-Hill Ryerson, 1976, p.7.
26. J.A.G.Griffith, *Central Departments and Local Authorities*, London: Allen and Unwin, 1966, p.17.
27. Ibid.
28. See Donald Higgins, *Local and Urban Politics in Canada*, Toronto: Gage, 1986, p.5ff

PART IV

LOCAL GOVERNMENT TODAY AND TOMORROW

LOCAL GOVERNMENT: SOME INTRODUCTORY REMARKS

Alan F.J. Artibise

The establishment in the 1970s of the Ministry of State for Urban Affairs, was a recognition, at least in part, of the need for a national agency that had, as part of its mandate, the development of the national settlements policy. Since the 1979 demise of that Ministry, very little has happened except the occasional article or book that argues that we should have a national settlements policy again. Whether or not that is the case, I think it is interesting that the Canada Mortgage and Housing Corporation (CMHC) retained what was left of the urban mandate. Almost ten years after the demise of the Ministry of State for Urban Affairs, the Corporation is starting to ask some questions again about what should be a national as opposed to federal, government perspective on urban areas. Similarly, in DRI and DREE and its new manifestation, the Department of Industry, Science and Technology (DIST) there have been some rather interesting debates and discussions about what DISTs approach to urban areas should be. Actually, I was invited a while ago to speak to Directors General when our regional directors of that department were meeting in Winnipeg. I spoke to them then about two new policies that they have recently implemented and which do not seem to have received much press across the country.

In the first of these they recognize something called the *soft* infrastructure of a city. By that they simply mean the educational institutions, the cultural institutions, the whole range of services apart from sewer and water and so forth, and note how important these are in terms of building up successful cities. Second, they are (or at least were—and I do not know what the reorganization will do to that) placing in their provincial offices specialists on those cities and municipalities with which they deal. In other words, they understand that a policy made in Ottawa cannot apply equally to a city like Montreal which is unique, not only in Canada but certainly in North America, and also to Vancouver and Victoria or Kamloops. One cannot make just one policy and expect it to work effectively overall; there is a need to put it through some kind of local process.

So this brings me to what I hope we will have some chance to discuss vigorously today and we will perhaps be able to start an ongoing debate that might catch the imagination of some of the people who should be engaged in this debate. And that is: what role should municipalities—and here I will use that term rather than urban areas—play? I tend to agree with the distinction that William Lane made when he picked up on the comment that the municipalities are not usually simply asking for more autonomy or more power in most areas. They are also asking for more money. What they really want are more financial resources because they have not yet made up their minds about what they want more power to do. For them power is usually translated into wanting an easier way to deal with their critical responsibilities. At some risk, particularly with the politicians sitting right beside me, let me suggest to you that there is increasing evidence, (and later I will be happy to suggest where some of that evidence may be found) that municipalities had better use some of their resources to make a strong case to the people of this country that they are a necessary, an important, indeed a critical level of government, because the evidence is rapidly mounting that municipal governments are not the level of government that is closest to the people. If you "ask the people" you will find that local governments are not the most, but the least, respected level of government, and that there is increasing evidence, in two areas particularly, that they are perhaps not the most capable but the least capable level of government in terms of doing what they say they should do well.

The first of the two examples I will give is urban infrastructure. We are told that there is a crisis, both in this country and in the United States, about urban infrastructure. Well, who is responsible for urban infrastructure? In my view, it is the municipalities, and the fact that they are now facing a major infrastructure overhaul simply suggests that long ago they should have been putting into place a system that would replace that infrastructure in an orderly fashion. That is not to suggest that senior levels of government do not have a role to play, but it is the idea of claiming that there is a crisis that municipalities can only solve by looking to senior levels of government that really makes a question.

Second, perhaps Vancouver and British Columbia are exceptions to the rule but, generally speaking, the municipal tax system in this country is a disaster. Toronto, Hamilton, and Winnipeg, to name three major urban areas, have literally allowed their property tax system to fall into an absolutely disastrous mess. And, in the process, they have literally been breaking provincial laws by not reassessing properties. The only way that those issues have been dealt with in most of those jurisdictions has been by the court stepping in and forcing them to deal with the problems. So we have to ask some very fundamental questions about what municipal government's role should be; for example, how it should be put into the larger framework of federal/provincial/municipal relationships.

I will simply end my comments by saying I do not want to be misunderstood. I am a strong supporter of, and believer in, the value of local democracies in a society like ours. I have argued in writing and in briefs to the province of Manitoba, when I reviewed the City of Winnipeg, that the city needs more power, not less. My problem is that as an academic, I have not got the support from the people who are running those governments. They have not picked up that debate. As May Brown reminded us, in the late 60s and early 70s, the Federation of Canadian Municipalities put out some very useful papers that talked about the power issue, and for a short time there was a debate about status. Perhaps it took place as a result of the fact that the Ministry of State for Urban Affairs was no longer in existence. But that was fifteen years ago and we still have not had a debate about it. Perhaps we are going to start that debate today.

LOCAL GOVERNMENT REORGANIZATION IN QUEBEC
Cause and Effect

Marie-Odile Trepanier

Looking for a link between this seminar's general theme and my contribution, it appeared to me that decentralization might be an appropriate key to stimulate our thoughts after the Meech Lake Accord. Decentralization is indeed a fascinating question: in many countries, it has recently been the centre of much debate and yet has been proposed by governments as different as those of Thatcher and Miterrand. In Quebec, local government reform was presented under the guise of decentralization. Did that mean anything more or different from typical reorganization? Yes, I would think so. It has been qualified as a compromise between tradition and modernity. And yet it was carried out by perhaps the most reformist of all recent Quebec governments—that of the Parti Québécois.

This brief presentation of local government reorganization in Quebec will be made in relation to a sequence of three periods: from 1965 to 1976—unsuccessful attempts toward systematic reorganization; from 1976 to 1981—the adoption of local government reform through different important legislative instruments; from 1981 onwards—the debate on decentralization.

1965-1976: ATTEMPTS TOWARD SYSTEMATIC REORGANIZATION OF LOCAL GOVERNMENT IN QUEBEC

Numerous studies and proposals for local government reorganization were examined in the Sixties and early Seventies but they always faced strong opposition from local politicians.[1] Yet, in the same period, Quebec carried out many major reorganizations in the fields of education, health and social services, and economic development. In each of these fields new ministries were created and new regional structures established, which were all part of the "Quiet Revolution" and its goal to achieve a stronger and modern "national" or provincial state. These were the years when Quebec gave itself new institutions and tools with which to plan, control or stimulate economic development: nationalization of electricity, creation of many crown corporations with specific intent to develop new industrial strength, Quebec Pension Plan and the Caisse de depots, and suchlike. In 1965, the province was divided into administrative regions which were intended to be the basis of socio-economic planning. Local government reorganization was to follow logically; thus, in the Sixties, proposals were aimed towards strengthening regional centres and sub-centres within these administrative regions, through consolidation or the establishment of a new metropolitan or regional level of government.

Very little came out of these systematic visions of urban hierarchy. However, the creation of Montreal and Quebec Urban Communities and the Outaouais Regional Community in 1969 were important yet *ad hoc* answers to each of these areas' specific problems.

Different strategies were attempted in the early Seventies. One of them was a ten-year program for establishing municipal communities all over Quebec based on a reference map suggesting 131 study sectors. However, it was greeted by such an uproar from rural area local politicians that Premier Bourassa was forced to put a stop to the program in 1973. Another strategy was to link regional planning with local government co-ordination as a sort of preliminary stage towards reorganization. This was only one formal experiment in the Metropolitan Council of the Upper Saguenay, but a few others were tested on a more informal ground: in the Urban and Regional Communities, around the Montreal airport, and in smaller areas like Thetford-Mines and Charlevoix. A third strategy emerged through the setting up of provincial-municipal conferences in 1972 and 1975 where the province would put forward matters for debate and try to work out some consensus for reform with representatives of local governments. Out of these debates came the acknowledgement that no reorganization could be achieved without fiscal reform. But the Bourassa government did not have time to develop this idea for it was supplanted in 1976 by the Parti Québécois government. However, as we will see, these different experiments were useful to the new government.

Before entering into this next period, we need to reassess the whole picture as it began to be understood in 1976. While in other fields, the Quiet Revolution had been free to implement new structures, in municipal matters it was restrained by a still active and politically influential group of local representatives organized into two important unions: the Quebec Union of Municipalities (representing urban areas) and the Quebec Union of County Councils (representing rural areas). Both these unions were opposed to any reform that might weaken their powers, but they were also in conflict among themselves on many issues, which made it even more difficult for a government to develop proposals acceptable to all.

This reluctance of local representatives contributed to the development of ministries' strongholds in more specialized fields. The failure of systematic reorganization and of global or comprehensive planning gave rise to more incremental approaches. Many ministries developed new policies and tools relating to land use or local activities in matters of environment, heritage preservation, parks and wildlife conservation, housing, and so on. Many of these new policies imposed new strains on local governments which were feeling invaded or dispossessed of their traditional autonomy.

1976-1981: LOCAL GOVERNMENT REFORM

When the Parti Québécois took over in 1976, it inherited an already sophisticated and powerful bureaucracy. Thus, it also had to cope with increasing criticism as much as with financial constraints, largely because of the international monetary crisis. In plain words, a strong centralized bureaucracy was no longer seen as a solution to all our problems. Yet, there was a great need to rationalize and better co-ordinate public policies and expenses.

But the Parti Québécois was a very vulnerable government. It could not impose a thorough reorganization without a strong consensus. And, while preparing the 1980 referendum, it needed to develop policies that would stimulate political support, not alienate it. In view of all of these circumstances, local government reform and reorganization were redesigned under the slogan of decentralization. Originally, the decentralization policy was seen by some as a new administrative vision for a new sovereign state.

The first 1977 draft policy[2] contained important and interesting approaches. First, it suggested a complete redesign of roles between local governments and the province. The latter would be relieved of many detailed tasks; it would concentrate mainly on research and development and general policy making, leaving much of the implementation activities to a new regional government to be created, and to local governments. Second, this new regional government would group together many more or less decentralized institutions, created in the Sixties and Seventies, in the fields of education, health and social services, and regional economic development, and they would be joined with the more traditional municipal county, which was to be restructured. Functions to be assigned to these new regional governments would comprise land use planning, primary and secondary education, social development, economic and tourism promotion, secondary roads and property assessment. Other functions such as transit, water supply, sewage treatment and housing were also contemplated.

However intellectually stimulating, this proposal did not go very far; it was never even publicly released. As was mentioned by a Quebec news reporter,[3] this reorganization would involve more than 15,000 local admdinistrators who had never really worked together and were already quite skeptical about the Parti Québécois government. A few months later, the government came back with a proposal limited to the traditional local government field but very carefully elaborated under the slogan of decentralization and local government rejuvenation. Within these themes, an important set of three policy proposals, one on land use planning, another on local fiscality and a third on local democracy, were submitted to the 1978 provincial/municipal conference and underwent intensive consultation with both municipal unions.[5]

The proposed reform was based on the principle of strengthening local government capabilities while increasing their accountability. This was done by alleviating controls and conditional programs and by intensifying the political character of local decision-making. The proposal on local fiscality was probably the centrepiece of this reform. In its simplicity and straightforwardness it was a typical (Minister of Finance) Parizeau product. The main purpose was to increase local financial autonomy; that was done first by giving local governments the entire property tax previously shared with school boards. This tax was said to be thus more visible politically and more manageable at the local level. Second, a complete revision of grant systems eliminated most grants related to ordinary expenses and many conditional grant programs. New priorities were set for the few conditional grant programs that remained: they would deal mainly with capital expenses and related to issues of national (that is, provincial) significance, such as transit or environment. Instead of transfer payments from senior governments, the reform recognized the value of "in lieu of taxes" payments. The 1986 Parizeau Report[6] reminds us of the main principles behind this reform: local governments have become more independent of external financial sources and therefore, are accordingly supposed to ensure a proper balance between their revenues based on local fiscality and their level of services or expenditures. Thus autonomy leads to responsibility and accountability.

The reform of local democracy completed the fiscal reform by strengthening citizens' controls over local government. This was done by increasing access to information and public consultation and by enhancing local political parties, through official recognition, controls on financial contributions, and so forth. Although generally perceived as modest, this reform's more or less implied goal was to open up local government to a wide spectrum of social interests, thus perhaps bringing more "modern" people onto the local scene.

The third reform was probably the most ambiguous. Indeed, the *Land Use Planning Act of 1979* comprised many elements, the most striking being the establishment of Regional County Municipalities, which were compelled to adopt a regional development plan within seven years of the Act becoming law (Article 3). At the beginning this was to be the only mandatory power given to the Regional County Municipalities, but it was the intent of the government that their functions would be increased when the decentralization scheme was more developed. This was somewhat frightening to local politicians as will be seen later. To appease their uneasiness, the legislators agreed to give them total control over RCM's through indirect representation instead of through other devices previously contemplated, such as direct election or representation from other social components like community groups, workers unions, Chambers of Commerce, and so on. An amendment was also incorporated into the Act so that RCMs' limits and conditions of representation would be decided through a consultation process with local municipalities (Article 167). Compared with previous reorganization proposals, this legislation was seen as a typical Parti Québécois product: ambiguous, prudent, *epafiste* (gradual). But without these concessions the proposal might have suffered the same fate as the previous ones. The price paid for its adoption was a rather modest immediate result, but with some potential, although undetermined, future. Indeed, the story was not over; decentralization was still on the agenda. We will now turn to the more recent period to see what happened.

1981 ONWARDS: DECENTRALIZATION, AN INTENSIVE DEBATE

The years that followed the adoption of the local government reforms have witnessed an intensive debate on decentralization. It quickly appeared that the word did not mean the same thing to everyone and that many complementary issues were involved.

For the government, the question appeared simple at first. Once the RCMs were established, what new functions should they allot to them? Two kinds of functions were considered: some would be delegated from the government to the RCMs, others would be entrusted to them by mutual agreement between the local municipalities. Within government, there was a surge of studies and proposals for decentralization. Many ministries suggested adjusting their regional divisions to the RCMs! Many ministries sought to associate RCMs with new programs through delegation of management responsibilities. Some ministries thought of cleaning up old programs by giving RCMs duties of inspection, permits, or maintenance. By doing so, the ministries would be able to reduce their own staff and expenses. Another more sophisticated form of decentralization was to give RCMs important functions like water/sewage treatment or transit, but to keep control over them through procedures and standards defined at the government level.

Reactions were quick to come. The Union of Municipalities organized a series of conferences on decentralization in 1982 during which many issues were raised.[7] First, local representatives asked government to stop this piecemeal unco-ordinated decentralization and to control its own ministries. Second, they asked that no decentralization be done without consultation. Third, they rejected decentralization of merely maintenance tasks: they wanted decentralization of political power, not just of administrative duties. Fourth, they did not want general standards and controls: in their view, every region had its own character, and rules had to be adapted to each. Finally, they asked that no decentralization be done without corresponding financial support.

This debate raised interesting questions: how much control should the government keep over delegated matters? To what extent can general standards be defined? Should decentralization of functions be acccompanied by decentralization of financial sources and, once again, with how much autonomy?

More blows were struck at governmental attitudes towards decentralization by two important non-governmental reports. The first came from the Planning and Development Council which in November 1982 made a thorough study of the ongoing thrust towards decentralization.[8] The second was delivered in 1986 by the Study Commission on Municipalities,[9] sponsored by the Quebec Union of Municipalities and headed by Jacques Parizeau. Although not as much publicized as the latter, the former gave a new and strong orientation to the debate by questioning the tendency to decentralize directly to RCMs. Indeed, it first raised the problem of democracy and accountability of RCMs to the general population. It stated that citizens do not directly elect RCM leaders; they do not know these organizations very well. It is not the RCMs but the local municipalities that are important to citizens. Therefore, decentralization should be directed towards local municipalities, not towards RCMs; and it would be up to local municipalities to decide if they wished to pool their resources into RCMs. Another important point made by this 1982 report was to emphasize the limited capacities of local municipalities and to suggest that government should consider each region's own "rhythm", given their experience, expertise and concerns. Furthermore, the report recommended that decentralized powers and functions may differ in each area depending on the context.

The 1986 Parizeau Report went along with similar positions. Wishing to eliminate much ambiguity about them, it insisted on the idea that RCMs must be considered as a municipal tool and not as a government agency. They were no longer a regional government, said the Commission, but rather an administrative level, at the service of local municipalities, an instrument of co-operation and management. Therefore, the Commission considered that local municipalities had to be able to exercise a greater autonomy and control over RCMs in terms of functions and financing. Government had to refrain from using RCMs for implementation of its own policies; and avoid substituting grant programs for local fiscal autonomy. However, if local municipalities wished to do so, it should be possible for them to enter into contractual agreements with the government and to take over some administrative responsibilities through their RCM, provided adequate financing was available. Thus, the report fully accepts the idea that RCMs may differ from one another and that government should stop thinking in terms of general standards applicable to all of them.

The report's commitment to local autonomy is such that it recommends an end to government efforts to reduce the number of municipalities. There are 1500 municipalities in Quebec, and that is acceptable. Studies have proven that economies of scale are very limited. Yet, existing municipalities correspond to a social reality that must be respected.

Has Jacques Parizeau, the former technocrat, become totally committed to the return to local autonomy and traditional decentralization? I would not think so. One important principle underlined in the report is that each level of government should be totally responsible for its own activities and accordinagly have related financial autonomy. Therefore, mixing of responsibilities and interdependencies should be avoided as, in the end this would tend to deprive one level of government of autonomy, responsibility, or accountability. Parizeau attributes quite different roles to provincial and municipal governments. Provincial government in the past twenty or thirty years has invested in most fields considered as collectively essential: education, culture, economic development, transportation, environment, health and social services, to name a few. Parizeau sees these as vested rights which correspond to accepted values for the entire community, and which could not be decentralized to the point where they could disappear. Those general values must remain in the hands of the provincial government. On the other hand, it must be recognized that those services which may be decentralized may be supplied in various ways, and even not supplied at all, if that is the wish of the local community. Therefore, decentralization means acknowledgement of diversity according to differing needs, values, and means. If, in Parizeau's mind, a service or a good is so much valued that it should be available to everyone, then it should be a provincial responsibility.

However, it may be that some local municipalities may be strong enough or big enough to take over some responsibilities, or to add extra services to those already given by the province. That should be possible in the future, says Parizeau. Another reason for this high degree of flexibility is the extreme variety of situations covered by RCMs. Some of them are solely urban, others solely rural. For rural areas a regional federation of services can be very useful whereas big urban cities are already generally well equipped. For the time being it seemed to the Commission that RCMs were most useful in rural areas where they help strengthen local communities. Parizeau suggests, therefore, a sort of floating decentralization with RCMs "a la carte." This incremental approach differs greatly from the typical bureaucratic vision; it needs a complete reversal of traditional reformist attitudes, says Parizeau. From now on, reorganization or reform, if there is any, should come from the bottom up and not from the top down.

CONCLUSION

From a reformist viewpoint it is indeed difficult to draw a conclusion on recent so-called local government reforms. Yet, although there are few tangible results, it does appear that there has been a general rise of the consciousness level regarding decentralization and its consequences. This may be a better result than actual reorganization without support from local politicians. Perhaps the most important aspect is that which Parizeau strongly advocates: a rising level of responsibility and accountability of local politicians.

Many new devices now lay out the way to change. All three legislative pieces previously mentioned have a role to play: the fiscal reform should stimulate local accountability; the reform of democracy should help to open up local government; and the Land Use Planning Act should pave the way to intermunicipal co-operation. All of these reforms tend to lead towards a new bottom-up model of provincial/municipal relationship which may force its way through in the future.

NOTES

1. For accounts of these attempts see:
   G. Divay, et J. Leveillee. *La reforme municipale et l'etat quebecois*. Montreal:

I.N.R.S.-Urbanisation, coll. Etudes et documents, No.27, 1981; J. Leveillee, (ed). *L'amenagement du territoire au Quebec*: reve ou compromis? Montreal: Nouvelle Optique, 1982; J. Leveillee, et J. Meynaud. *La regionalization municipale*. Montreal: Nouvelles Frontieres, 1972; J. Leveillee, et M.-O. Trepanier. "Evolutions de la legislation relative a l'espace urbain" dans *Droit et societe urbaine au Quebec*. C.R.D.P., Montreal, 1981, ou *Revue Juridique Themis*, 1981-1982, Vol.16, Nos 1-2.

2. Gouvernement du Quebec. Projet de *Livre blanc sur la decentralisation*, decembre 1977.
3. Roland Giroux, cited in Leveillee and Trepanier (note 1), pp.102-103.
4. Secretariat a l'amenagement et a la decentralisation. *La decentralisation, une perspective communautaire nouvelle*. Juin 1978 (series de 5 fascicules), Gouvernement du Quebec; Ministere des Affairs Municipales, *La revalorisation du pouvoir local*, juin 1978, Quebec, Gouvernement du Quebec.
5. The three proposals were subsequently adopted as Bill 57 on Municipal Fiscality (L.Q. 1979, c.72); Bill 105 on Local Democracy (L.Q. 1980, c.16); Bill 125 on Land-Use Planning and Development (L.Q. 1979, c.51).
6. Union des Municipalites du Quebec, *Rapport de la commission d'etude sur les municipalites*. (Rapport Parizeau) 1986.
7. G. Fortin, J. Leveillee, et L. Parent. *La decentralisation et le pouvoir des municipalites*, dans quel pouvoir voulons-nous? Colloque sur la decentralisation organise par l'Union des Municipalites du Quebec, septembre 1982.
8. Conseil de Planification et de Developpement du Quebec. *La decentralisation vers les gouvernements locaux*. Avis et recommendations ou Premier Ministre, novembre 1982.
9. Rapport Parizeau.

MANAGING REGIONAL DEVELOPMENT: THE CASE OF THE GREATER VANCOUVER REGIONAL DISTRICT

Hugh Kellas

This paper considers some aspects of managing regional development in the light of constitutional change, using the Greater Vancouver Regional District (GVRD) as a case study. The GVRD is a federation of sixteen municipalities and three unorganized areas with a total population of about 1.3 million.

The remarks are presented in the context that the Constitution is essentially an agreement between the federal and provincial governments. Metropolitan areas have no direct voice as communities. Yet, many of the results of constitutional agreements are seen in a particular physical location. Thus, constitutional changes can have an impact on the ability of regions to achieve their development aspirations, to manage their finances and, in general, to provide the quality of life desired by their residents.

The following are four examples from the Greater Vancouver region of how senior government relations affect our ability to manage regional development.

IMMIGRATION

Provincial involvement in immigration policy is included in the Meech Lake Accord. Provinces are given greater involvement in establishing the selection policy, although the federal government retains control of the total numbers. In Greater Vancouver, foreign immigration is an important element in population growth although the level of foreign immigration varies from time to time. As a general rule, Greater Vancouver receives 70 percent of the immigrants to

British Columbia. The presence of existing large immigrant communities encourages further immigration since many immigrants are sponsored.

Immigration policy will tend to become much more important to Greater Vancouver as a result of population dynamics. As the baby boom elements of the population reach higher mortality years in the early part of the next century, it is likely that population growth will depend more and more on immigration. Inevitably, questions about the number and type of immigrants will become more prominent. Therefore, immigration policy will have a substantial impact on the region both in regard to population growth and as to whether there will be the type of skills required for economic growth. And, in essence, decisions on immigration policy will be made without the presence at the table of those who will have to deal with the impacts from a settlement perspective, for example impact on housing, community relations, and the economy.

TRANSPORTATION

Major transportation infrastructure is in the hands of federal and provincial governments—airport, port, railways, major highways, and transit. Each and all of these aspects has a substantial impact on a region's economy and livability. The GVRD has to work with them in regional development.

Take, for example, the question of the Vancouver International Airport. There is a federal initiative on local airport management and a federal-provincial committee is presently looking at specific implications for Vancouver International Airport. The future of the airport has considerable importance for the economy and infrastructure of surrounding municipalities and for the Greater Vancouver region as a whole. The implications will be seen and felt in regard to tourism and business travel development, international trade and in relation to air cargo. Thus the airport is a major factor in Greater Vancouver's transportation infrastructure. It is a key component in economic development strategies. Unfortunately, the municipalities are not presently at the table and are not even being kept fully in the picture.

URBAN INFRASTRUCTURE REPLACEMENT

There has been an increased awareness on the part of metropolitan areas of a need to replace old and outdated municipal infrastructure. In the past, the federal government has participated in infrastructure development, largely in order to serve rapid suburban growth. To meet present and future needs, municipalities have proposed a federal/provincial/municipal program to fund infrastructure replacement. For British Columbia this is estimated at a cost of $1 billion spread over ten years—that is about $35 million from each level of government per year. Municipalities would be hard pressed to raise their share and it would not be possible to finance the full program from the property tax base.

This proposal has received support from the provincial government and from municipalities. However, there has been a clear rejection by the federal government, notwithstanding that this kind of action would reduce unemployment insurance payments, assist economic development, and address environmental concerns. A contribution to infrastructure replacement has been viewed as not within federal jurisdiction.

REGIONAL ECONOMIC DEVELOPMENT

This area is one of major political interest as the impact on communities is easily seen. Currently, in the Greater Vancouver region the unemployment rate is in the 10 to 15 percent range, with prospects that a high level will continue. There is naturally a strong demand to provide employment for an increase in the number of people entering the labour force. There is also a need to redirect the region's economy to meet new demands in the international economy.

All levels of government have become increasingly engaged in economic development activity. Many municipalities have produced economic development strategies and set up mechanisms to implement them. Most major economic development activities however, are through federal-provincial agreements such as the Western Diversification Program which is a $1.2 billion program for Western Canada.

In Greater Vancouver we also have the federal-provincial Asia-Pacific initiative. This consists of a series of studies and initiatives related to forging links and expanding trade with the Pacific Rim countries. Local and federal-provincial economic development initiatives however, are not well co-ordinated. Local governments are not an integrated part of the senior government initiatives, and are not in many cases kept well informed about what is happening. Thus, it is not clear what role the municipalities are to play.

OTHER EXAMPLES

There are many other possible examples. For instance, health care will be a growing issue for the region. The GVRD pays 40 percent of hospital construction costs. The approach to health care taken by federal and provincial governments will inevitably affect costs for the region, yet there is little opportunity for regional influence on policy. This will also apply in the case of new social service programs, for example in day care. There are also environmental issues, such as management of the Fraser River Estuary.

SO WHAT?

In many respects nothing is new. Power lies with the senior levels of government for major infrastructure and social policy. For the municipalities, there are obvious limits on what can be done on the base of property tax financing, and the senior governments have shown little interest in changing the approach to taxation. They have also shown increasing reluctance to transfer funds to local governments. Urban issues cannot be addressed solely by local governments, but they often have a good understanding of how best to deal with them.

Local governments have always had to be adept at lobbying for the things needing to be done. For the GVRD these include a locally controlled airport, economic development programs that fit local needs, and adequate transportation infrastructure. Good inter-governmental relations are what is required to produce action.

In the future, what may be different is where municipalities have to go to get these things done. There seems to be a great willingness to try new structures as exemplified in the Constitutional Accord and the program for Development Regions in British Columbia. It may be concluded that municipalities will have to be extremely adept at understanding where the forces lie—between the federal and provincial governments—and how they can influence new policies as they are developed. Simply following accepted practice is unlikely to work.

One of the most powerful influences on policy, at any level, is knowing what you want. Greater Vancouver needs to know what it wants for its development. This certainly will apply in regard to infrastructure, transportation, economic development, social services and so on. It is conventional wisdom that governments gravitate to a good, ready-made idea with broadly-based, established support; but it works.

My personal view is that we have to do much better in articulating what we need as a region, as a union of municipalities in Greater Vancouver, and in communicating those objectives to the sources of senior government power and policy. In so doing, we must keep in mind those institutions that are in a state of flux. I hope that GVRD's municipalities will use this opportunity for change to advance their ability to influence regional development.

A VIEW FROM THE MUNICIPAL PERIPHERY

Marilyn Baker

It is said that forecasting is very difficult, it is, but that is what I have been challenged to do here today—speculate on the effect the Meech Lake Accord will have on Canadian communities.

I would have to say that the closest most municipalities have come to involvement with the Accord is the presence of local Council members from across Canada in the same city at the time the Accord was signed. The Annual Convention of the Federation of Canadian Municipalities was in progress in Ottawa on June 3, 1987 when the nation's attention was focussed on the First Minister's meetings a few blocks away. And maybe that is a fairly graphic image. The head of our national government meeting with the heads of the provincial governments while, within hailing distance, the heads of local government from cities and towns throughout the nation are also meeting, each level dealing with specific issues and concerns that affect our mutual constituents and taxpayers.

The title for my presentation is "a view from the municipal periphery," and at this stage I would have to agree that *periphery* is the appropriate description. My handy pocket Oxford dictionary defines periphery as: "Bounding line, especially of round surface; outer or surrounding surface or region." Maybe if we start viewing our federal, provincial and local governments in this context—of working together as an entity, a whole, an encompassing unit—rather than in the hierarchical context, of using and believing the catchy phrase about *orders* of government rather than *levels* of government, that is where we can see some of the impact of the Meech Lake Accord. Because such major changes that affect any of the jurisdictions affect all of the jurisdictions, directly and indirectly.

The major message and impact of the Accord is the commitment of our federal government to promote and build on the regional strengths of Canada. The fact that this was done so specifically in relation to Quebec should not lessen the overall philosophy. It recognizes the decentralized, regional approach as being required to strengthen this country overall; it recognizes that the decisions made federally on many issues, affect each area differently, and as each region differs, such decisions impact positively on some and negatively on others, although presumably that is not the intent.

The constitutional protection of an expanded immigration agreement with Quebec and the agreement to enter into Accords with other provinces again transmits down to affecting local government, because it is in the cities and districts where people live and carry on their daily lives. It is here they require services to be provided at the local level, from education to police protection, and certainly our immigration policies have a dramatic effect on the requirements for those services which are provided and funded at the local level.

The granting of compensation to provinces that do not participate in national shared-cost programs, if they undertake their own initiatives compatible with national objectives, again affects that delivery of service at the local level. Education, and social housing funding are but two examples that transmit the impact directly to local government. In this area, I believe we must exercise some caution to ensure that such compensation for "overseeing" by the provincial government results in programs as effective and efficient as those run on a national shared-cost basis. As an example let me cite, from the GVRD level, the social housing formula between CMHC and the provinces, and/or local governments. The GVRD has a housing corporation and we have some 3200 units spread throughout the Greater Vancouver region. I believe that virtually all other provinces in Canada also have a direct involvement of their provincial governments in picking up the deficit and handling some of the problems that exist in dealing with the various units that are not allowed (under CMHC jurisdiction) to be handled on a portfolio approach. So we may have forty different projects spread throughout the whole region, and some of them may make money. In fact they may make money even though they are social housing! Others in fact may lose money, as in some of the downtown and eastside Vancouver areas. But under CMHC jurisdiction, we are not allowed to take money from one project to support the others. They have to be dealt with independently. For the last four or five years we have been in the ridiculous position of haggling with the feds as to why we should not pay them back a million dollars on projects that have made money while we are left with a deficit on other projects.

Now, there is something to be said for not having the provincial government immediately jump in and pick up the deficit. There is something to be said perhaps for the management being a little tighter, but that is the kind of inter-jurisdictional problem that one runs into. It indicates how national policy, which is not reflected in the province of British Columbia with an offsetting policy, has had a detrimental effect locally.

These are just several areas of the Accord that I can see indirectly affecting municipalities. I believe however, that the main thrust is philosophical. It is a "coming of age", of recognition that there may be a better way to run the country, one which allows for regional differences and enhances them within a national context, one which recognizes that the closer one is to the people—provincially or municipally—the more likely one will be able to respond to their needs and requirements. This should not be surprising. It is a message that has been sung across this country by the very same people from the Maritimes to Vancouver Island. It is a message we at the local government level have been hearing increasingly over the past ten years, where we are often required to involve ourselves in issues that are "beyond our jurisdiction", from nuclear disarmament to economic development. This is surely a recognition that some traditionally federal programs are better delivered on a regional basis, and that "region" could be interpreted as provincial or broken down even further to a position of local knowledge and content. While federal support is needed financially on an equitable basis it should be possible to allow for a more local, or more direct, calling of the shots.

I believe this country needs more co-ordination and less fragmentation if we are to move forward confidently into the twenty-first century, and that can only be successfully accomplished if there is a *healthy* balance of jurisdictional authority in line with the social and economic needs of today. As Joey Smallwood said "It's not where you are, it's where you're headed that matters." I hope we are headed in the right direction, to where we can work together to cut back on duplication, and recognize that provincial and regional differences and needs and differing politics and philosophies exist, and where we are able to recognize these as part of our strength and health so that we work well together as a nation.

As any woman who wears pantyhose knows, the "one size fits all" claims are simply not the case. Granted that it take a little more *care* and *research* and *effort* and *commitment* to tailor the product to the various users, but the end result is far great comfort and satisfaction with the manufacturer. So, the Meech Lake Accord can be said to have paved the way for a new thinking about our nation and our provinces, and the peripheral municipalities. It is an approach that can give a new sense of direction and co-operation and partnership throughout the country.

There are still many cases where governments are bouncing jurisdictional balls—and bills—to others, usually (in our old [illegible]ay of thinking of levels) downwards. Municipalities are still having to battle against being handed an increased tax load, from radio transmission licences to additional federal taxes on goods for infrastructures, to delivery of criminal documents (previously handled by the provinces), to picking up the short-fall for social services when funds are cut back by other governments. This gives municipalities increased responsibility without the authority to collect from a broader tax base.

We find transit decisions being made by the province and then handed to local government to come up with ways to finance. Decisions are made at the federal level by the Environment Ministry with no consultation having taken place, that translate directly into millions of dollars of infrastructure upgrading required at the municipal level in order to comply with new legislation. These are but several examples that show how we are still having to hammer away at the provinces and the federal government to recognize that along with responsibility comes authority and that the one cannot be passed along without the other. That is not to say that there are no success stories of tri-governmental consultation and co-operation. The formation of a federal, provincial and regional Task Force addressing the question of safe transportation of dangerous goods in the lower mainland is an example of such an effective co-operative undertaking. So all in all the Accord can be seen in a positive light—long the lines of "what you conceive and believe, you achieve" and I believe that Meech Lake can serve us all in good stead. Any time one governing body is willing to consult and share the power—where it is in the best interests of all—and when that power is moving to those most directly involved and aware of the regional circumstances, we must all gain.

PART V

SOME DISCUSSION AND SOME CONCLUSIONS

PART V

SOME DISCUSSION AND SOME CONCLUSIONS

THE DISCUSSION SESSION

Following upon the presentation of papers, a lively discussion centred on some of the personal reactions and convictions of those present. The following pages contain the major elements of this open session. It was introduced by remarks from Hilda Symonds, session moderator.

HILDA SYMONDS: As a planning commissioner and an educator in urban affairs, I have always been concerned with "process". This word has occurred several times today, particularly in regard to comments on the process used in reaching the Meech Lake Accord. Professor Cairns hit home when he talked about the exclusion of "the company" in reaching the Meech Lake decisions. If the company consists of the "expert witnesses", there is also a third group—the jury, the "ordinary" people who are going to make the final interpretation. I do not believe that they have been properly involved. If the Accord is really important to the whole future of Canada, why are we not talking about it over coffee in our kitchens—as well as round a table in an academic setting? That worries me.

Second, there is the question of information and knowledge, so tied into this whole business of process. Perhaps nowadays this is clouded somewhat by the fact that we are getting too much information, about too many things, for too much of the time. The signals are beginning to get scrambled. Think about how many when we sit before our television screens. We have remote control—and when we get bored we change the channel without even getting out of our chairs! I have a feeling that something like this is operating in regard to politics. When we are dealing with important issues, we have to be very careful about the way in which information is given out if we want the signal to be received. Unless of course some of the people who are making the decisions do not want them exposed to the sunlight, to the winds of change, or to the chill of a snowfall. It is important that the *people* should be concerned—and the academics, whose field is knowledge, should be most concerned of all.

A third area, is the matter of disparity between local government and something we keep referring to as *the urban community*. Because the urban community does not have a charter or a boundary, or a set of by-laws, it is not an entity in our government process. But it is a very real entity in our Canadian life. There is no question that Canada is predominantly urban. This morning we talked about special interest groups. We identified women's isses, the handicapped, Quebec. Maybe the "urban community" is a special interest group. And in that context, we have to think, as Quebec thinks, in terms of geography and history because, while urban development and lifestyles help to unite the urban community, in this country geography and perhaps some deficiencies in communication systems tend to fracture it.

We have also talked about power in many ways: different kinds of power, local power, federal power, provincial power, and about fiscal autonomy which is very much related to power. However, there is a human dimension in the whole question of power and we must not lose sight of that. It is not just something that is in the balance sheet, it is something that is in human nature.

I would like to leave you with this idea, which came from a Nigerian chief: "My people are a family of whom some are dead, a few are here, and many are coming." That is the context for considering Meech Lake.

WALTER HARDWICK: Having been twenty years now in various levels of government, I am beginning to feel that perhaps we are putting undue emphasis on the question of the constitution and Meech Lake. I note the view of advocates who assure us that it will advance co-operative federalism, but it seems to me that the basic issue gets down to the ability of people and organizations to work together for common objectives, very often expressed at the local level. Relations will not improve through the adoption of statutes. Rather, improvements must be made in the relationships of hundreds of politicians and public servants who run our public affairs. I think old Adam Smith was right—that we live in civic households or provincial households, and that the welfare of those households is important. I do not think it makes any difference what national elite you might belong to. You also share with many others the place where you live and work. In the 'seventies we had the Robarts-Pepin Commission that dealt with relationships among the various orders of government. It was observed that the biggest problem was the attitude of Ottawa politicians and public servants towards their provincial counterparts—an attitude of superior dealing with inferior. This is a very sad state of things that the Commission viewed "as a significant cause of conflict between governments." I do not know how we overcome that situation, but it seems to be one of the fundamental elements. Therefore, if we are going to take something out of this meeting, we have to look at more than the question of the Constitution. We need to look at relationships among the various orders of government. That does not need constitutional change; it does not even need statutory change; it needs change in the most difficult thing of all, behaviour.

Someone made reference to *perestroika*, to Gorbachev trying to set broad principles. I do not hear such a thing in this country, and I think this is something we should explore. "Superior" versus "inferior" is not a working relationship. I believe I know why it developed. It was because a few generations ago many provincial and municipal politicians were considered "hicks" because they were not dealing with very much. But it has been my experience, and I have a suspicion that it has been the experience in Quebec, at least from the Lesage period, that the people who have moved into the public service at the provincial and municipal levels have undoubtedly been the equals of people in the federal service. Nevertheless, many provincial officials still see Ottawa as remote. I think that is a fundamental area that needs addressing and I do not see this being done. It is here that leadership is required.

Prime Minister Trudeau, in 1978, came out with a paper called "A Time for Action" which stated that constitutional responsibility and priorities of the provincial governments would be taken into account by consulting the provinces and in proposing legislation and formulating policies of shared jurisdiction, and that this could have an effect on financial and other areas of provincial responsibility on an activity or an area. A great statement of principle! However, when you look at the record, only limited consideration was given to the active participation of provincial politicians and officials. Instead, the federal departments created numerous policy and advisory groups. At one point in that time, 126 consultative committees of experts or special interest groups existed. The working view was that you did not have to consult provincial politicians or municipal politicians, that consultation with interest groups and experts would provide adequate input. If you were doing that you were doing enough to create policy and programs in this country. I believe that approach to be fundamentally wrong. When I addressed federal people on that particular issue, in my role as a deputy minister in this province, they would say, "We can't consult with you for security reasons." For security reasons! Are we somehow subversive if we are part of provincial governments? So I would like to suggest that we have some problems in this country that we can and should move to correct. We are being hoodwinked by a group of politicians, and a supporting cast of journalists and academics, into thinking that if we play some kind of constitutional game it will make some fundamental change in the way we govern and order services in this country. I think we are fundamentally wrong. Let us see this for what it is—something that can be dealt with without constitutional change, without statutes, something that can be done with a quantitative change in relations and a recognition that people are operrating in a system in which municipal, provincial and federal bodies all have legitimate and continuing roles. It requires leadership if collaborative federalism is to be practised on every front that the several orders of government interface. That is the challenge.

PETER OBERLANDER: The trouble is that to a high degree behaviour is the result of institutional environment and involves both institutional and personal relationships, not one or the other.

GERALD HODGE: It is a rare occasion when I can say that I agree with both Dr. Oberlander and Dr. Hardwick! If you say that institutional aspects affect behaviour, I would agree because governments have learned to govern through the institutions that they have established and somehow cannot seem to break out of, and so their behaviour is largely governed by that. But I think I would echo what Dr. Hardwick is saying by taking the discussion into a completely different realm. When you get past the big five, or the big 23 metropolitan areas in Canada, you are talking about 2000 local governments—about 96 percent of the territory of this country, where one-third of the population lives. Most of those municipalities are small, much smaller than North Vancouver. If North Vancouver has problems, what do you think

Williams Lake has? Or Carberry, Manitoba? Most of those people out there have said, "Don't bother me with all of this stuff. If you're going to come and talk, talk about something that is fundamentally important to human wellbeing, and about our desire to have a high degree of control over our own personal welfare and self-determination in this world and in Canada. We'll listen to it." They certainly listened when there was an attempt to change the indexing on old age pensions! In other words, people will respond when you are touching them with something that is important. We are always concerned with this "nimby" problem—Why don't people come out and participate when we're doing the community plan? Why do they only come out on the rezoning? Well, the rezoning hurts, it is real, and that is why. It is people that create need, and in that third of the population who live in rural, small communities, I do not hear them being excited about Meech Lake. I do not hear them being interested, and it is not a matter of "I'm alright Jack." They are not too badly off, and I would suggest that one of the reasons that they are not too badly off is not because of what government has done for them in the past three to four decades, but what has happened generally in society. We have instituted universal programs for health and welfare, and those have made things better, as well as local initiatives, and a lot of initiatives of citizens, communities and companies all around the country. I think that the Meech Lake thing is a "floating crap game" over there in the corner which is not all that important to the bulk of people in this country. And I almost have a feeling that free trade may prove to be exactly the same.

MARILYN BAKER: I have a challenge that I would like to throw to the academic level. The one thing noted over the past several years is the fact that there is very little educational material on local government. It seems to me that if we are talking about awareness, that something should happen at the local level, so that the young people who are coming up have an awareness of how things happen and of the importance of government.

ALAN ARTIBISE: I want to respond to Dr. Hardwick and to talk briefly about the now six-year-old Winnipeg Core Initiative, which is well-known all over Europe, is increasingly studied in the States, but no one in Canada ever wants to look at it. It is the age-old problem in Canada that we do not think we can do anything well here. If I were in the Federation of Canadian Municipalities, I would be pursuing and pushing and want the Core Initiative. In simple terms it is a $100-million five-year program, which is now in its second five-year $100-million stage, where the federal government, the province of Manitoba, and the city of Winnipeg sit down as absolute equals at a table, and deal with a wide range of service issues, infrastructure issues, education issues, service issues. To my knowledge, it is the first time that a municipal government has absolute equality with the federal government and the provincial government in spending that kind of money. They have put in equal amounts of money. It was a deal that Winnipeg could not refuse, but what is important is that it has worked. The example of transportation of dangerous goods, is directly in that line of development. All this has done is to take it further. Second, it has spun off public corporations in which the shareholders are the three levels of government. One such is the North Portage Water Corporation, which is the downtown revitalization with a budget of $76 million, and the new one is the Forks Redevelopment Corporation with a startup budget of $20-million. Both will mean projects that will spend a half- to one-billion dollars over the 20-year period. So there are examples, and Walter Hardwick is right, it does not take constitutional change. Particularly at the municipal level there is a willingness to act together, so that you can deal as equals with a province that can speak through a minister and a federal government that can speak through a minister. The biggest problems over the years in Winnipeg were when the Mayor said "I have to go back and consult." Municipal government has to learn how to change itself; not absolutely, but enough so that it can deal with provinces and federal government in terms of the way those governments operate, just as those other orders of government have to learn how to deal with the change.

WALTER HARDWICK: We have an example here in Vancouver—we would not have had Granville Island if that sort of thing had not happened here. But as you say, when there is a deal to sell, that is when the real power is seen.

HILDA SYMONDS: While that may be the mechanism for generating ideas in a given area, I am not sure that we actually have this in general practice. That is in bringing together the "wisdom people" instead of the official decision-making bodies all the time. In Canada we need more communication across the country. I have sat on various voluntary national committees and the problem of getting from western Canada to the inevitable meetings in Ottawa or Toronto, is always a major problem.

PETER OBERLANDER: We had tri-level conferences. Our major concern was to establish a mechanism which would allow the three partners to sit around the table. The first big push was: let's find a mechanism for consulting. It was a federal initiative from the beginning, and nine out of ten provinces were bitterly opposed to it, and did everything possible over 18 months for this not to occur, out of sheer fright that it ultimately could become a parallel source of power. It happened twice, the first time in Toronto and the second in Edmonton, at a natioanal level. At the provincial level it was far more successful, and at the municipal level even more so. In Vancouver the tri-level context lasted for about eight or nine years, so that tri-level consultation at the local level, as Dr. Artibise showed with the Winnipeg example, is clearly an element of machinery which ought to be revived, re-instituted, re-invented. But there has to be a space, an opportunity for it. Then the behaviour will also change, because the moment people sit around the table and begin to see that they do not all have horns, and that there is something to be gained by trading concerns as well as resources, there is an opportunity to get on with it. The Core Area Initiative is an excellent example. To get the tri-level consultation together nationally there were three questions: Where? When? and Who? "Well, it can't be in Ottawa, because that's out of the question. It can't be in a provincial capital, because that would create the symbolic reality of provincial power." It had to be somehwere convenient. Toronto airport was the best possible rendezvous because all the fare schedules were such that this would work! But it could not be Toronto because that is also Queen's Park. We could not meet at the airport for various reasons, so, where in Toronto? Well it could not be in a public building because that would elevate either the local or regional or provincial government to the role of host. Finally we agreed it had to be in a hotel. We spent six weeks going around looking for the right hotel, only to discover that each one had had some recent party-political relationships with either the Liberals, or the Conservatives or the NDP. And none of the hotels would be acceptable to the tri-level attendees. So where did we finally end up? No, not the YMCA, or Meech Lake, it was in a hotel, which had not yet been opened. So, in effect, we moved three weeks before opening into an unsullied environment, totally sterile in a political sense. Those were some of the difficulties of the first tri-level meeting. I am not going to talk about the size of the room or the shape of the table, or how to seat delegates, that was another six weeks! These are long-held, complicated, sometimes symbolic, very often real situations. So the Core Area Initiative is an excellent example of how it can really work.

ALAN ARTIBISE: And a focus, that is the key. People in Ottawa may fret about all these symbolic things but if you say—the downtown community axis is falling apart, and there are social problems and we have got to solve them—the neighbourhood improvement program is a perfect example of how a specific issue could be dealt with, because the local municipality had a lot of control over how the money was spent. The federal government deserves a lot of credit for it and it should never have ended. There were some rational rules, and I know there was a lot of national debate, but I do not know anybody who criticizes that program.

VICTOR JONES: Are you suggesting that it is likely to be more productive and easier to bring about, if you do not institutionalize the relationships between the orders of government? If you do not enshrine them in the constitution? If you handle them case by case, bringing the relevant people together, putting the problem before them? In large part this is what Feldman and Graham recommend in their book. Normally when there are third parties like municipal associations, each municipality has its own representatives, permanently or whatever the occasion requires, and you set up negotiations based on what you can do with the time and who the people are who are involved and so on. And I raise that question because I have been intrigued by your executive federalism as I guess you would call it. I see you can do it here but we cannot because of the difference between the parliamentary and congressional systems. No executive in the United States could commit his legislature to do anything, and the premiers and the Prime Minister can do that here, when they consult.

ALAN ARTIBISE: But the municipalities cannot, at least not at some levels, although there are ways around some situations.

VICTOR JONES: The one thing that it seems to me that we need, and I do not know how it can possibly be done, could be for some consultative process so that local governments and state governments and the national government can talk to each other. They would have to meet every year, because there are different problems every year. I am sure the audience would be interest groups of all kinds, probably the largest audience outside a boxing match! They could talk about the effect of proposed national policies on the States and municipalities, proposed state policies, proposed local actions, on the drive against inflation, or whatever. I do not know if your tri-level conferences were ever developed into something like that? But to some extent I gather you have that tri-levelling, as not only the first ministers meet, but other ministers meet, and I should think lower than middle-level managers meet, to talk about things together. We have nothing formalized like that. The President of the U.S., whether he is a Democrat or Republican, usually meets with state Governors once a year. But he never invites a Governor of the other party to those meetings!

MARILYN BAKER: I think that one of the things you have to be aware of in pursuing the process on an ad hoc basis is that there are some downsides, because whoever is the hustler at the municipal or provincial level, whoever is the squeaky wheel, will get the oil. The process worked well in Winnipeg, and it worked well when we went after the Polar 8 contract (to build an ice-breaker). It all made good sense and it was all above-board, but where it gets out of hand is that the next step is that somebody says they would like to do that too, and they go off on a tangent, whether or not it is fair. And the ad hoc approach can have a downside because, as Hilda Symonds says, there is not a lot of process and it comes and goes, depending on the flow of the leadership.

ALAN ARTIBISE: I disagree with you about the ad hoc process. No more federal dollars were spent in Winnipeg than normal, but the dollars were focussed, and the municipality had a say in how they were spent. And that is the critical point.

ANDREW SANCTON: I would like to give thought to the issue of the Parizeau fiscal reforms in Quebec in the late 1970s, mentioned in Ms. Trepanier's paper. They really were quite remarkable. Just quickly to recapitulate, what happened there was that the provincial government basically took away the authority of school boards to impinge on the property tax, gave all the property tax to the municipal governments, took away grants to the municipal governments, so that there are virtually no provincial grants to municipal governments now, and then funded all the school boards through provincial grants. Now, for people interested in municipal autonomy, that plan has a great attraction. It is something that people interested in municipal governments in Ontario certainly looked at because there was so much competition between school board taxes and municipal government taxes. Many people had said: "Well, what we need in Ontario is more authority for the municipal government such that they certainly control the property tax if not new taxes." That has many attractions. However, at a deeper level there is a real problem with that approach as the result is to have watertight compartments of jurisdiction, provincially and municipally. For example, municipalities in Quebec, like most Canadian municipalities, do not have any control over public education as many municipalities do in the United States. Also, municipalities in Quebec have no control over social services, the kinds of things I was talking about in my paper, precisely because there is a completely parallel but separate network of special purpose bodies there. So I think there is a choice when you are looking for the role of municipalities in all this, between watertight compartments on the one hand, where municipalities really have a considerable amount of autonomy and financial resources to work with in a fairly limited number of jurisdictions, or the alternative of wider jurisdictions such as you have in regard to social services and, I would say, ultimately into public education as well. However, there are certain constitutional difficulties relating to separate schools and suchlike. The implication of having wider jurisdiction is that there would be new life breathed into municipal politics. There would be different kinds of people recruited, a different kind of political scene. The downside or implication of that is that municipalities would have to continue receiving conditional grants, and they would be regulated and controlled in all kinds of other ways, because society does not want to put all social services, and certainly not public education, under the direct, unfettered control of municipal politicians. I think there are some strategic choices for municipalities to make. Do they want to have full control over a limited number of jurisdictions and financial resources to handle those? Or do they want to have a wider field of jurisdiction and a much more "messy" intergovernmental environment, of the kind that one finds in the United States and described by Victor Jones? After giving some thought to the Quebec situation, although it initially appealed to me, I must say that in the end I would conclude the "messy" intergovernmental relationships and the wider jurisdiction are ultimately preferable.

ALAN ARTIBISE: I was going to make a comment in response. There are a number of current and former municipal politicians here. One of the things I have never really understood is why we have a whole separate structure of government to deal with public school systems. To me it is really almost absurd.

PARTICIPANT: You are quite prepared not to have somebody specifically elected to deal with the question of education?

ALAN ARTIBISE: We do not do it provincially and nationally, why should it not work at the municipal level?

PARTICIPANT: Well, only recently in this province the government took the school trustees off the college councils. This was wrong, because now we have lost the mix of people that could reflect the community interests. I really believe they are different interests.

COMMENT: The logic of that is, of course, that you abolish local municipal government and set up a special purpose body for every function, for every interest, because they are all different in the same way that education is different.

MARILYN BAKER: But there is a happy medium. The one thing that came out of our Premier's Decentralization Conference in January was an interesting "smorgasbord" that was put before the municipalities and there were the mayors, sitting around there, saying: "Well, do we really want to take on health? Do we really want to take on the operating of hospitals?" It was interesting because the answer was: "I don't really think I want to get into that." How about liquor licensing? "No, I'm not too sure." But "hospital financing does not seem to be working so maybe we had better have a look at it." Therefore, I think there is a balance of some things that work on an overall basis and some that have to be special purpose.

VICTOR JONES: Talking about intergovernmental consultation or a bargain negotiation, I read and I hear that there is a lot of unhappiness in Canada now about the formalized intergovernmental processes, and that, instead of consensus, you are getting bitterness and recrimination. I am surprised—I think consensus is the last thing in the world you want to guarantee, unless you agree in order to put consensus up as an overarching value. The same thing happens you know when the newspapers talk about the summit meetings between Russia and the United States. "What came out of it?" they say. They do not know what came out of it so they say that nothing came out of it. But the kind of non-consensus discussion that went on between Reagan and Gorbachev was valuable, just because it was controversial and an opening-up of points of view held by each. It seems to me that the essence of federalism, philosophically, is a system of continuous tension and disagreement among governments that have a right and the power to be heard and to be taken account of. Now, in Great Britain, local government does not have any of those kind of rights, for instance, neither does the Scottish Opposition. And look at Ulster; they did have it and look what happened. It seems to me we ought to value the kind of debate and discussion that comes out of a meeting of people who are equal, since they are around the same table, at least at the moment that they are around the same table, and who have a right to be concerned in the other group's business. Because the feds have an interest in what is happening locally. It affects their programs. I am not talking about coercion here now, I am just talking about involving all kinds of people with all kinds of different interests and it cannot be done except at the very lowest common denominator if consensus is what you are seeking.

ALAN CAIRNS: I think on Meech Lake, the problem a lot of people have is there is too much consensus. You know, ten governments got together, agreed, and will not publicly indicate any of their differences to the community. The three major federal parties in the House of Commons agreed. I mean, we are unhappy with this excessive consensus as we would prefer to open it up to the citizens. But that is not the Meech Lake episode, it is the reverse of the Meech Lake episode.

PATRICK SMITH: In terms of problems in municipalities, it is often the provincial ministers who talk about people raising issues that are contentious in the context of putting politics into it. Someone raises the question of education and the provincial minister will say: "You're playing with politics" in an attempt to control the agenda.

ALAN ARTIBISE: This goes back to the challenge that Mayor Baker raised about too much ad hoc-ery. The interesting thing about cities is that you want them to be different, to have personalities and to have certain things about them that they do particularly well. So, you have to balance an ad hoc approach, where everyone runs off in twenty different directions at the same time, with some kind of sensible organization in the country in national terms so that all cities are not literally competing for the same kinds of things. Unfortunately, what we are getting in Canada, to some extent in key economic issues is: Winnipeg lost the CF 18 which it should have got, and is now getting a disease control centre that should be in Montreal. The whole thing is being turned around. I do not know the answer to that because, given the political system, these are political decisions but it is insanity.

MAY BROWN: Back on this question of the consensus. We had a comment earlier about how people, say in Williams Lake or 100 Mile House are not worried about Meech Lake. They have their daily concerns like 20 percent unemployment in 100 Mile House with lots of problems in the community. That is what they are worried about, I agree. But is this not a question of lack of leadership of our people at the provincial level—of our premier and our leader of the opposition—that the question of the Meech Lake Accord and its implications are not being brought forward? I think it was well put earlier. So I agree with what is being said here, that too much consensus is bad. I think it shows a lack of leadership, and one almost feels that there is a bit of a conspiracy of silence on this thing. What will happen when this comes into the House in Victoria? Is it going to be a nothing issue because we have heard both leaders say that they are going to support the Accord? So, are we just going to have a "me too-ing" and then the thing is over? I think it should be of great concern to us all. I think these issues should be brought to the fore. People out in 100 Mile House are not going to sit down over supper and say to one another, "Well, what do you think of Meech Lake?" They are just not going to do it. But if they turn on the television and hear it debated, they will be very interested. But it is the leadership that has to bring it to the fore. The average person cannot because they do not have the wherewithal, the mechanics, the papers, the things to read, the issues brought to them.

MARIE-ODILE TREPANIER: I think we do need a new balance between a model based on conflict and no decision, and another model based on negotiation towards any decision consensus for which the price is secrecy and no debate. We need something else. But you must put this in historical perspective. It is not a new debate; it is a very long debate. My conclusion is that other provinces have discovered something they had not foreseen, because all provinces have become equal, have gained the same rights as Quebec. I think that is new to you and that is probably what you would like to debate. As for Quebec, there is not much new but there is a new aspect. One thing that you must also be aware of is that we in Quebec have lost a lot in this negotiation. I think a lot of people agree that we have made a very big compromise on spending power, on recognition of federal spending power. That is for us a very big step backward. This was the price we agreed to pay, but it is really hard on Quebecers. And a lot of Quebecers also would have liked more debate on this issue. I think it is really an historical moment that did not really give us the chance actually to debate the matter. We do have common concerns—we all agree that we should have debated more, but the price might have been no decision. So there is the problem.

CONCLUDING COMMENTS

PETER OBERLANDER: Let me reveal my prejudice in this case. The process that you raised is absolutely crucial for one additional reason. Let me see if I can lay it out very briefly. Apart from the secrecy and the conspiracy of silence, it was not a consensus at all. In other words, the word "consensus" does not apply! I think here we are dealing with a haggling in the dark which ultimately provided some resolution. Is the result a shifting of the decision-making process from the traditional bodies to an entirely new device? I grew up in a world where the decisions were made in parliament, federally and provincially. And that meant that all issues were discussed and debated across party political lines and then some decision was reached. As the ten premiers began to meet in the '70s and now in the '80s, they have, in fact, in my words "usurped" parliamentary procedures. Or, if you like it differently, parliament has given up the traditional forum of discussion and of analysis to eleven men as distinct from legislators, so we have eleven men behaving as if they, in fact, have all the power to make the decisions. One other point. The presumption is that they are all equal. But I am sure we would agree that the premier of PEI cannot possibly speak with the same voice as the premier of Ontario. In fact, the four premiers of the maritime provinces have 40 percent of the votes and represent ten percent of the population. So in terms of process a big switch has occurred of which Meech Lake is only the last or the latest phenomenon. This is a real switch, from the parliamentary process of discussion, analysis, and decision-making, to the First Minister's Conferences which started out as an occasional event in the first Trudeau administration and how have become enshrined. So, in fact, we have moved from the parliamentary tradition to something quite different where parliament is taken for granted. Professor Cairns explained earlier that it is taken for granted that the eleven legislators will agree that the Senate is essentially going to be appointed through the provinces. My basic point here is that in this process, not only have we got this conspiracy of silence, but I perceive that we have actually gone through a very major change. In a nutshell, Meech Lake was a watershed—but not one that happened all at once, but has been the result of about ten or fifteen years of shifting from a parliamentary open, Hansard-documented and therefore, publicly accountable process, to the eleven men meeting and making instant decisions which they claim will be binding.

ANDREW SANCTON: It seems to me that the College of Cardinals provides a model. They are not allowed to eat dinner together. Each goes to his cell until they all have to come back for consultation in electing the Pope.

ALAN ARTIBISE: I just want to say that Peter Oberlander is talking as though he grew up in the mid-19th century! That was the time when parliament behaved in the way he just described. That was the classic period when parliament decided things. Since then, parliament has played the role of debating government policy after the major elements have been laid down. So, I acknowledge that things have changed as a result of executive federalism in Canada, but I do not think that we can point to some period in the immediate past where parliament was deciding things. I also think that in terms of executive federalism, the federal/provincial bargaining, we have to go back further than ten or fifteen years. Look at how the Canada Pension Plan was worked out twenty-five years ago, when the major decisions were made about the Canada Pension Plan and the Quebec Pension Plan. Incidentally we also have the "opt out" provision beginning here—it is nothing new. So if we are blowing whistles and ringing alarms, let us at least acknowledge that we are probably doing it twenty-five years too late! I do not see it in such negative terms, but it has been a long process in Canadian history. I would like to add one more thing to what Ms. Trepanier said, because I thought she would include it in her list of how important this is to Quebec and how much Quebec has given up by the Meech Lake Accord. I think it is astounding, given what happened through the "Quiet Revolution" and the election of the Partie Quebecois, and the fact that the whole confederation debate was couched in terms of more jurisdiction for Quebec. In regard to jurisdiction I am not talking about consultation on Supreme Court appointments or Senate appointments, I am talking about more legislative authority. Look at what has happened: Quebec has now signed on the dotted line of this constitution. The Quebec round is over. Quebec has no new legislative authority as a result of the whole process, and if that is not a major watershed in terms of Quebec's relation to the rest of the country, I do not know what is, and I think that should be recognized.

COMMENT: I am not sure I can agree with that. People who are concerned about it say: What does a distinct society mean? There is a whole profession out there—they are called Canadian historians—who say that that clause could blow the Charter of Rights.

ALAN ARTIBISE: It could also mean nothing at all.

COMMENT: Yes, but there is a group of people who are very concerned about something called the "Distinct Society" and the power that it gives to the province of Quebec, and I suspect that some of the people in Quebec who agreed to what you call "an astounding situation", did so because of that clause.

GLADYS SYMONS: I would like to clarify a point. Indeed, Quebec does feel as though it has given up a lot for this accord. We certainly do not think that the negotiations are finished and that the Quebec round is over. For us, it is a beginning and the issue of the distinct society indeed will be a major one. There has been a long debate in Quebec whether it should have been spelled out in some form and I personally come down on the side of those who say it should. I think at the very least the issue of language and what the distinct society is should be clarified. I think it would be naive to think that Quebec is going simply to accept this package and never bring it to the fore again, because it is not the happiest of solutions for us.

HILDA SYMONDS: I would like to insert something here. In 1975 during the pre-Habitat period, I presented a brief suggesting that we needed an Urban Council for Canada, that would be advisory and informative—something along the lines of the Economic Council. Its charge would be to ascertain the aspirations and concerns of the people of Canada in regard to the development and management of Canadian communities and in regard to national and regional policies concerned with settlements and to make recommendations. It would be concerned with public participation, information, urban education. It should be a multi-disciplinary resource. Is this idea still relevant? I thought it was then and I think it still is.

JONES: There is one arrangement in the U.S., if you are interested and serious in what you propose, and I think you should look at it carefully; it is called the United States Advisory Commission of Intergovernmental Relations. This is a body of twenty-five people set up in the last year of the Eisenhower administration, consisting of four public members appointed by the President. The President designates the Chairman. There are three United States Senators selected by the Senate, three representatives selected by the House of Representatives, there are four governors, appointed by the President from a list submitted by the National Association of Governors, there are three Mayors and three County officials, selected by the President from a list of about five mayors and more County commissioners, and the State legislatures are also represented in the same fashion. So you have that group of people, with a fairly small staff, which has undertaken an enormous amount of research and produced many recommendations, both to States and localities, and to the national government. I do not think this is the same thing as having a consultative body of Governors and Mayors and President, but it seems to me to be the kind of council you were talking about. In their enormous amount of research they have published three volumes on Canada!

HILDA SYMONDS: I think there is a place in an advisory capacity for people who have no overt ambitions, who are not looking to be elected, or for promotion and increases in salary. They are looking for some way to throw what they know into the larger pot.

BOB CAREY: I would like to ask the meeting here, and particularly Peter Oberlander, how at the end of this very wide-ranging discussion, he views the title of our discussion and the impact of the Accord on our settlements. We have heard a great deal about relationships and programs. What is the overview?

PETER OBERLANDER: This is a very tall order, but here is a start. The Meech Lake Accord ought to be seen in the context of a fifteen- to twenty-year trend of shifting the power-to-govern from the Centre to the Periphery: from Ottawa to the provinces. In a recent article "The Process of Constitutional Change in Canada: the Lessons of Meech Lake", (*Choices*, February 1988, Halifax, Institute for Research on Public Policy), Senator Lowell Murray ably traces the rocky road of bringing our constitution and the fragile process of patriation and amendment into the twentieth century. The Meech Lake Accord is sometimes identified as an extreme example of closed, in-camera, executive federalism, but even those who see it as the only alternative to on-camera conferencing, will admit that it is a major event in adapting and shaping Canada's constitution with extensive long-term implications to the full system and structure of governing Canada. The shift from "the centre to the periphery" is both substantive and symbolic. Many of the presentations at the seminar and the wide-ranging discussion that followed, are testimony to these facts. Both before, during, and since the Meech Lake Accord has become committed public policy, at least by a majority of governments, little has been heard of local government and its future. Throughout the last three decades Canada has become urban in terms of where people choose to live and work and their prevailing lifestyles. Canada has become a nation of cities, a fact that may lead to some competition for power to govern vis-a-vis the provinces. The municipal or local administrative and institutional structure, particularly the scope and scale of local governance, has not changed since Confederation, and does not reflect the current urban reality of Canada.

The Meech Lake Accord effectively and symbolically has consolidated the federal/provincial structure and further manifested the power of the eleven first ministers. The role and responsibilities of local government has not been changed explicitly. Implicitly however, and symbolically, provincial jurisdiction has been strengthened and thereby the urban voice regionally and nationally, has been diminished.

Several of the participants have spoken of successful local initiatives and effective co-operation between the municipalities and their respective provinces as well as the federal government. There is growing evidence that the urban reality of Canada's economy demands increasing accommodation between all levels of government and Canada's cities and towns in resolving issues, preventing problems from exacerbating relationships, and bringing to bear all available resources to improve living and working in the metropolitan areas for all Canadians, regardless of their representation in the federal or provincial legislatures or at city hall.

However, governance and its success cannot be based solely on the goodwill of the participants, important as this is. A mature society trusts itself and anticipates the future by agreeing on an explicit framework of governance which is structured essentially to facilitate the development of policies, implementing them, and assuring accountability through a political system which aims at equity, justice, and maintaining the body politic in unity and balance. That is why the role and responsibilities of local government ought to be examined closely in the post-Meech Lake era, to ensure further improvements in how we govern ourselves and how a country the size and diversity of Canada can harness its burgeoning urban network to face the twenty-first century successfully.

The next round of shaping governments in Canada ought to include its cities and towns by right and thereby complete the trend of shifting from the centre to periphery so clearly manifested in the Meech Lake Accord.

APPENDICES

A GUIDE TO THE CONSTITUTIONAL ACCORD OF JUNE 3, 1987*

INTRODUCTION

On April 30, 1987, First Ministers met at Meech Lake, Quebec, to consider proposals intended to bring about Quebec's full participation in Canada's constitutional evolution and to lead governments to begin a "second round" of discussions on further constitutional change. At that meeting, First Ministers reached unanimous agreement on six major elements of constitutional change, which were set out in what has become known as the Meech Lake agreement. On the basis of that document, officials were instructed to draft constitutional amendments. The proposed amendments were reviewed and unanimously approved by First Ministers at their meeting in Ottawa on June 2 and 3, 1987, together with a companion political accord.

The purpose of this document is to highlight briefly the principal features of (a) the political accord, (b) the constitutional resolution which will be submitted to Parliament and the legislatures, and (c) the text of the proposed amendments. They are appended as Annexes 1, 2 and 3 respectively.

CANADA'S CONSTITUTION AND ITS AMENDMENT

In proceeding with these amendments, all First Ministers have been mindful of their role as modern Fathers of Confederation. Patriation of the Constitution on April 17, 1982 was an historic milestone in Canada's constitutional history, which ensured Canadians could effect changes necessary to the development of their modern federation without reference to the British Parliament. It also Provided Canadians with a Charter of Rights and Freedoms. Nevertheless, the achievement of patriation was flawed because Quebec, which represents over a quarter of the Canadian population, did not agree to the constitutional accord of November 5, 1981.

---

*This guide explains the Meech Lake Accord in layman's language

The Constitutional resolution agreed to by First Ministers on June 3, 1987, once approved by the Senate, House of Commons and the legislative assembly of each province, and proclaimed in force by the Governor General, will give constitutional expression to the principles of the Meech Lake agreement. These amendments will be the first that have been supported by all provinces, including Quebec, since patriation and proclamation of the Constitution Act, 1982.

Proclamation of the amendments agreed to on June 3 will ensure that Quebec participates fully once again in the constitutional councils of Canada. It will also set in motion an agenda for constitutional discussions in the years ahead.

THE MEECH LAKE AGREEMENT AND THE 1987 CONSTITUTIONAL RESOLUTION

The Meech Lake agreement expressed First Ministers' commitment to proceed with constitutional amendments in six areas: Quebec's distinct society, immigration, the Supreme Court, the spending power of Parliament, the amending formula and a second round of constitutional discussions (the last item also covered conferences of the economy and Senate appointments).

In developing the legal text for the amendments, First Ministers further agreed that the spirit and wording of the Meech Lake agreement should be respected as much as possible and that all Meech Lake commitments be honoured. This has been accomplished, in part, through the political accord and, for the most part, in the text of the proposed amendments appended to the resolution.

There are, then, three documents:

- the political accord sets out First Ministers' commitment to proceed expeditiously with the constitutional amendments and certain other related undertakings that would be inappropriate in the Constitution itself;
- the motion for a resolution provides the means for seeking authorization by the two Houses of Parliament and the provincial legislative assemblies of a constitutional proclamation by the Governor General of the amendments set out in the schedule to the resolution;
- in the schedule to the resolution are found the actual texts of the proposed amendments to the Constitution.

The schedule, entitled the Constitution Amendment, 1987 will have a life of its own after proclamation. But since most of its clauses will amend either the Constitution Act, 1867 or the Constitution Act, 1982, little will remain in it after the amendments have been consolidated with the Acts to which they refer.

Let us then look at the three documents.

1. THE 1987 CONSTITUTIONAL ACCORD

The Accord sets out the commitment by all First Ministers and the governments they represent to take early action on the constitutional amendment resolution, as well as three other commitments arising out of the Meech Lake agreement that are not reflected in the amendments.

The "preamble" to the Accord reflects the intention of the Meech Lake agreement: that is, to bring about Quebec's full and active participation in Canada's constitutional evolution, to foster greater harmony among governments through new arrangements and to hold annual constitutional conferences, the first of which must be held before the end of 1988. The agenda of those conferences will include Senate reform, fisheries roles and responsibilities and other agreed upon matters. The Accord then goes on to state four commitments:

- the first is to lay or cause to be laid before the Senate and House of Commons and the provincial legislative assemblies the resolution as soon as possible;
- the second provides that, prior to proclamation of these amendments, an immigration agreement shall be concluded between Canada and Quebec which will subsequently receive constitutional protection in accordance with the procedure provided by the new constitutional provisions respecting immigration;

— the third confirms that immigration agreements with other provinces can also be negotiated;

the final commitment ensures that the new nomination procedure for Senators (described below) is to take effect forthwith upon signature of the Accord and prior to the proclamation of the amendments.

2. THE MOTION FOR A RESOLUTION

This is the formal instrument which, once approved by the Senate, the House of Commons and the provincial legislative assemblies, will authorize the Governor General of Canada to proclaim the amendments. Once proclaimed, these amendments will become part of the Constitution and could not be changed except in accordance with the appropriate amending formula in the Constitution.

The first three recitals (the paragraphs beginning with "whereas") in the motion merely state that Quebec did not consent to the November 5, 1981 agreement to patriate the Constitution; that it set out five constitutional proposals upon which action would enable it to resume a full role in the constitutional councils of Canada; and that those proposals provide the basis of these amendments. The fourth recital notes the amendments will provide for new co-operative arrangements among governments and for a "second round" of constitutional deliberations. The fifth and sixth recitals make clear that unanimous consent will be necessary for the proclamation. The seventh paragraph is the resolution itself.

3. SCHEDULE: CONSTITUTION AMENDMENT, 1987

The schedule to the resolution provides the legal amendment text based on the Meech Lake agreement. It comprises amendments to certain provisions of the Constitution Act, 1867 and the Constitution Act, 1982, as well as certain provisions that will remain in the Constitution Amendment, 1987.

Quebec's Distinct Society

The wording of this section (found in clause 1 of the Constitution

Amendment, 1987) is taken from the Meech Lake agreement and reflects First Ministers' intention to recognize that the existence of English-speaking Canadians and French-speaking Canadians, both present in all parts of the country, but the latter concentrated within and the former outside Quebec, constitutes a fundamental characteristic of Canada. It would also recognize that Quebec constitutes a distinct society within Canada.

The section also affirms the role of Parliament and all legislatures to preserve the fundamental characteristic of Canada recognized above, and the role of the government and legislature of Quebec to preserve and promote its distinct identity. However, it is made clear that nothing in the section derogates from the existing powers, rights or privileges of either order of government, including those relating to language.

This section will become a new section 2 of the Constitution Act, 1867. Clause 16 of the Constitution Amendment, 1987 ensures that nothing in it affects the provisions of the Constitution respecting the aboriginal peoples or the multicultural heritage of Canadians.

Senate Appointments

The second clause of the Constitution Amendment, 1987 will add a new section 25 to the Constitution Act, 1867 respecting the procedure for summoning persons to the Senate. When a vacancy occurs in relation to a province, the provincial government will submit names of persons to fill the seat, but the person ultimately chosen for appointment must be named by (and thus be acceptable to) the Government of Canada. Technically, the Queen's Privy Council for Canada (that is, the federal Cabinet) recommends that the Governor General "summon" the nominee it finds acceptable to sit in the Senate.

Immigration

The third clause of the Constitution Amendment, 1987 will add sections 95A to 95E to the Constitution Act, 1867. Section 95 of that Act provides that immigration is a concurrent power with federal paramountcy.

Section 95A commits Canada to negotiate an immigration agreement with any province that so requests. Such an agreement, once concluded, could receive constitutional protection under procedures set out in sections 95B and 95C, and could not be unilaterally changed by either party subsequently.

These sections are based on the Meech Lake agreement and would allow constitutional protection for arrangements agreed upon by the federal government and a provincial government respecting immigration and the temporary admission of aliens into Canada.

Subsection 95B (2) of the constitutional amendment will ensure the federal government retains control over the national standards and objectives of immigration policy, primarily through its ability to establish classes of immigrants and admission criteria, to determine overall levels of immigration and to prescribe categories of inadmissible persons.

Furthermore, whatever immigration agreements with the provinces are eventually entrenched in the Constitution, the mobility rights of Canadian citizens and permanent residents protected by section 6 of the Canadian Charter of Rights and Freedoms will apply, as will all the other provisions of the Charter.

Sections 95B and C are, in effect, constitutional amendment procedures. Sections 95D and E set out special amending procedures for the amendment of 95B and C. Among other things, they seek to ensure that the constitutional foundation of an immigration agreement could not be abrogated without the consent of the province directly concerned.

Supreme Court of Canada

The sixth clause would add sections 101A to 101E to the Constitution Act, 1867. Their effect would be to entrench the Supreme Court, as agreed at Meech Lake, as well as the requirement that at least three of the nine Justices be appointed from the Quebec Bar (this reflects the existing requirement of the Supreme Court Act). Quebec, of course, is the only province with a civil code system.

Section 101C provides for a nomination process for appointments to the Supreme Court whereby a person acceptable to the federal government would be chosen from names proposed by the provinces. Only Quebec may propose persons for the three appointments representing its system of civil law and only the other provinces may propose persons to fill vacancies for the six positions which represent the common law tradition.

The Spending Power

The seventh clause of the 1987 Amendment will add section 106A to the Constitution Act, 1867. The purpose of this provision is not to define or extend the spending power of Parliament, but rather to require that the Government of Canada provide reasonable compensation to the government of a province that chooses not to participate in new national shared-cost programs in areas of exclusive provincial jurisdiction, but only if the province carries on a program or initiative compatible with the national objectives.

Conferences on the Economy and Other Matters

The eighth clause of the 1987 Amendment adds a new part XII to the Constitution Act, 1867, which would require the Prime Minister to convene once a year a First Ministers' Conference on the Canadian economy and such other matters as may be appropriate.

The Amending Formula

The ninth clause of the 1987 Amendment will amend section 40 of the Constitution Act, 1982, to require reasonable compensation in all cases where a province exercises its right to opt out of an amendment transferring provincial legislative jurisdiction to Parliament, rather than, as at present, restricting such compensation to transfers related to education and other cultural matters.

The ninth clause will also combine sections 41 and 42 of the Constitution Act, 1982. Section 41 requires unanimous consent for changes to some national institutions and the amending formula, while section 42 requires the support of Parliament and at least two-thirds of the provinces representing at least 50 per cent of the population of all the provinces for other amendments to certain national institutions and the creation of new provinces.

Now one rule—unanimity—will apply to all of these matters. The deletion of section 42 from the Constitution Act, 1982 will require a number of consequential changes.

Constitutional Conferences

The thirteenth clause of the 1987 Amendment will provide a new Part VI on Constitutional Conferences in the Constitution Act, 1982. It will require that the Prime Minister convene a First Ministers' Constitutional Conference at least once a year, beginning in 1988. The Agenda will include Senate reform, fisheries roles and responsibilities and such other matters as may be agreed upon.

THE NEXT STEPS

Each First Minister has agreed to take steps as soon as possible to introduce the resolution in Parliament or the provincial legislature, as the case may be. Once the resolution has been adopted, the Speaker will send a certified copy of the resolution as adopted to the Clerk of the Privy Council (the Secretary to Cabinet) in Ottawa.

When the Clerk of the Privy Council has ascertained that all of the resolutions have been adopted in proper form and that the necessary conditions to authorize a proclamation by the Governor General have been met, he so informs the Queen's Privy Council for Canada (the Cabinet) which, in turn, advises the Governor General to issue a proclamation forthwith.

When Her Excellency the Governor General proclaims the Constitution Amendment, 1987, an important but flawed chapter in Canada's constitutional development will come to an end. Governments, with new arrangements favouring greater harmony and cooperation, and Candian citizens, will then be able to set their sights on the future and work towards a constitutional renewal that will enhance national identity, strengthen federal institutions in the service of the people, and further ensure a tolerant and open society.

THE UNIVERSITY OF BRITISH COLUMBIA CENTRE FOR HUMAN SETTLEMENTS

THE FIRST DECADE

Anticipating the convening of the United Nations Conference on Human Settlements—Habitat '76—in Vancouver, the University of British Columbia set up a President's Committee on Habitat '76 to launch a programme of lectures and seminars between January and May 1976. A series of distinguished speakers with international experience was brought to Vancouver. The resultant papers were published by UBC Press under the title "Improving Human Settlements."

Subsequently, the Centre for Human Settlements was established in the Faculty of Graduate Studies to initiate and maintain a multidisciplinary research programme and engage a variety of academic resources in discovering solutions to urban and regional development in the context of rapid urbanization and deteriorating environmental conditions both in Canada and overseas. In meeting its mandate, the Centre has pursued substantive research, invited visiting scholars, convened invitational seminars, sponsored lectures on and off campus, and published extensive research results in a variety of formats. These include the publication of the work of 70 visiting scholars, 40 research seminars, 28 Habitat lectures, in 6 monographs, 7 books, and 44 occasional papers.

Upon the university's initiative at the conclusion of Habitat '76 the United Nations committed some 10,000 audio-visual items into the care of UBC. The Centre for Human Settlements took on the responsibility for sorting the films, slides and videotapes into an annotated catalogue, and developed a system for providing university-wide access to the material. Until 1982, when the audio-visual library was transferred to the University Library, the Centre for Human Settlements operated a unique videotape library and viewing centre available to faculty, students, and the general public. In addition, the library responded to requests by creating a number of special programmes out of existing materials.

During its first decade, the Centre has made substantive contributions to scholarship in the multi-disciplinary field of human settlements. As a Centre, it has brought together academics from a variety of faculties and departments at The University of British Columbia, as well as other British Columbia and Canadian and international Universities. It has brought internationally recognized scholars to the campus to interact with both faculty and students. The Centre has achieved international recognition for its publications program designed to share the results of discussion and research with academics, professionals, and government officials around the world and encourage further and continuing research and analysis on settlement issues in the developed and developing countries.

SEMINAR PARTICIPANTS

Alan F. J. Artibise
Director
School of Community & Regional Planning
The University of British Columbia

Marilyn Baker
Mayor
District of North Vancouver

H. Alan C. Cairns
Professor, Political Science
The University of British Columbia

Victor Jones
Emeritus Professor
Political Science and Public Administration
University of California, Berkeley

Hugh Kellas
Co-ordinator
Development Services
Greater Vancouver Regional District

William T. Lane
Lawyer, and Adjunct Professor
School of Community & Regional Planning
The University of British Columbia

H. Peter Oberlander
Professor of Regional Planning and Director
Centre for Human Settlements
The University of British Columbia

Andrew Sancton
Director and Associate Professor
Urban/Regional Program
Political Science
The University of Western Ontario

Anthony D. Scott
Professor, Economics
The University of British Columbia

Patrick Smith
Chairman and Associate Professor
Political Science
Simon Fraser University

David W. Strangway
President
The University of British Columbia

Hilda Symonds
Community Planner
Victoria, B.C.

Gladys L. Symons
Professor
Ecole national d'administration publique
Universite du Quebec

Norman Tarnow
Lawyer and Public Affairs Consultant
Victoria, B.C.

Marie-Odile Trepanier
Professor
Faculte de l'Amenagement
University de Montreal